(19,220.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 183.

RAFAEL RODRIGUEZ AND EURIPIDES RODRIGUEZ, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

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1 THE UNITED STATES OF AMERICA, *District of Porto Rico,* } ss:

At a stated term of the district court of the United States of America, within and for the district of Porto Rico, begun and had in the court rooms, at the city of Ponce, P. R., in said district, on the second Monday of January, being the twelfth day of that month, in the year of our Lord one thousand nine hundred and three, and of the Independence of the United States of America, the one hundred and twenty-seventh.

Present: The Hon. Wm. H. Holt, judge.

On Wednesday, the fourteenth day of January, 1903, among the proceedings had were the following, to-wit:

UNITED STATES *vs.* RAFAEL RODRIQUEZ & EURIPIDES RODRIGUEZ.	59.	Larceny from Letter, etc. Sec. 5467, R. S.

Be it remembered, that, to-wit: on the 14th day of January A. D., 1903, came the grand jurors of the United States of America, S. O. Donnell, Jorge Bird Arias, F. Philippi, Robert Fraser, Jr., José Portilla, Juan E Serrallés, J. T. Ramsey, Dr. A. E. Arrastia, S. Mir, J. C. Brown, Tomas Armstrong, Juan Torruellas, Ricardo Meyerstein, Joaquin Valdivieso, Mariano Vidal, and Enrique Vazquez, and presented to the court here their certain bill of indict-
2 ment herein, which said bill of indictment is clothed in the words and figures following, to-wit:

Bill of Indictment.

UNITED STATES OF AMERICA, *District of Porto Rico,* } ss:

In the district court of the United States, in and for the District aforesaid, at the January term thereof, A. D. 1903.

The grand jurors of the United States, impaneled, sworn and charged at the term aforesaid, of the court aforesaid on their oath present, that Rafael Rodriguez and Euripides Rodriguez on the 1st day of November, in the year 1902, in the said district, and within the jurisdiction of said court unlawfully did conspire together to commit an offense against the said United States and to defraud the said United States that is to say, to steal, embezzle and purloin moneys of the said United States; and that to effect the object of said conspiracy the said Rafael Rodriguez on the date last aforesaid and at divers other times afterwards, being a person employed in

the postal service of the said United States, to-wit: the postmaster of the post office of the said United States at Coamo, Porto Rico, feloniously did steal, embezzle and purloin divers bank notes and United States notes, the denominations and more particular description of which are to the grand jurors unknown, together amounting to the sum of, and being of the value of, five hundred and sixty dollars, of the money and property of the said United States; which said money was then and there feloniously stolen and embezzled as aforesaid by the said Rafael Rodriguez out of two certain letters
3 which had lately before come into his possession as such postmaster and had not then *being* delivered to the party to whom the same were directed, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

N. B. K. PETTINGILL,
United States Attorney.

And the grand jurors aforesaid, on their oath aforesaid, do further present, that the said Rafael Rodriguez and Euripides Rodriguez on the 1st day of November in the year 1902, in the said district, and within the jurisdiction of said court, the said Rafael Rodriguez being then and there employed as postmaster of the post office of the said United States at Coamo, Porto Rico, feloniously did steal, embezzle and purloin divers bank notes and United States notes, the denominations and more particular descriptions of which are to the grand jurors unknown, together amounting to the sums of, and being of the value of, five hundred and sixty dollars of the money and property of the said United States; which said bank notes and United States notes were then and there stolen, embezzled and purloined as aforesaid by the said Rafael Rodriguez and Euripides Rodriguez out of two certain letters addressed to the postmaster of the post office of the said United States at San Juan, Porto Rico, and intended to be conveyed by mail, which said letters had lately before come into the possession of the said Rafael Rodriguez as such postmaster and had not then *being* delivered to the party to whom the same were directed, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

N. B. K. PETTINGILL,
United States Attorney.

And on the same day, to-wit, the 14th day of January, A. D. 1903,
4 came the U. S. attorney and filed in the clerk's office of the court aforesaid a præcipe for capias in this cause, which said precipe in the words and figures as follows, to-wit:

Præcipe for Capias.

In the District Court, United States, District of P. R.

THE UNITED STATES
vs.
RAFAEL RODRIGUEZ and EURIPIDES Rodriguez. } Indictment for Embezzlement.

The clerk of said court will issue capias, an indictment against the above named defendant Euripides Rodriguez having been exhibited and filed in the above entitled cause, on the 14th day of January, 1903, the def't Rafael Rodriguez being already under bond, this 14th day of January, 1903.

N. B. K. PETTINGILL,
United States Att'y.

Thereupon there was issued out of the clerk's office of the court aforesaid a writ of capias in this cause directed to the marshal of the said district and against the defendant therein, which said writ is in words and figures as follows, to-wit:

Capias ad Respondendum.

UNITED STATES OF AMERICA, } *ss:*
District of Porto Rico, }

The President of the United States of America to the marshal of the district of Porto Rico, Greeting:

We command you to take Euripides Rodriguez if he may be found in your bailiwick, and him safely keep, so that you have his body before the judge of the district court of the United States for Porto Rico at the city of Ponce in said district forthwith to answer unto the United States of America on an indictment for viola-
5 tion of section 5467 of the Revised Statutes of the United States presented to said court, against him, the said Euripides Rodriguez on the 14th day of Jan. A. D. 1903, by the grand jury of the United States within and for the district of Porto Rico.

Hereof fail not, under the penalty of the law, and have then and there this writ:

Witness, the Honorable Wm. H. Holt, judge of the district court of the United States for Porto Rico, and the seal of the said court this 14th day of Jan. A. D., 1903, and in the 127th year of the Independence of the United States of America.

Attest:

RICARDO NADAL,
Clerk of the Dist. Court of the U. S.,
By H. H. SCOVILLE, *Deputy.*

And on the same day, to-wit, on the 14th day of Jan. in the year aforesaid an entry was made upon the journal of the said court, in said cause, which said entry is in the words and figures following, to-wit:

UNITED STATES
vs.
RAFAEL RODRIGUEZ and EURIPIDES RODRIGUEZ.

The bond of Rafael Rodriguez one of the defendants herein, was fixed at a thousand dollars to be takan by the clerk and the case is set for trial on Jan. 21st, 1903.

And afterwards, to-wit, on the same day in the year aforesaid came the defendants Rafael Rodriguez and Euripides Rodriguez and filed in the clerk's office of the court aforesaid two certain bail bonds in this cause which said bonds are as follows, to-wit:

Bail Bond of Rafael Rodriguez.

UNITED STATES OF AMERICA, *District of Porto Rico*, } ss:

6 THE UNITED STATES
vs.
RAFAEL RODRIGUEZ ET AL. } 59.

Know all by these presents that Rafael Rodriguez as principal and Euripides Rodriguez and José Julia as sureties, are held and firmly bound jointly and severally unto the United States of America in the sum of one thousand dollars (1000.00) for the payment whereof well and truly to be made we bind ourselves, our heirs, executors, and administrators and assigns.

Signed and sealed with our seals this 14th day of January, 1903.

Now the conditions of this obligations are such, that if the said Rafael Rodriguez shall duly appear before the district court of the United States for the district aforesaid, whenever called upon so to do by the said court in Porto Rico then and there to answer to a certain indictment, larceny from letter, etc., sec. 5467 R. S., duly preferred against him the said Rafael Rodriguez and shall abide by any and all orders said court may take in this behalf, attending the sessions of said court, from day to day thereafter until the final adjudication of said case, then and in that event this obligation to be void, otherwise to remain in full force and effect.

RAFAEL RODRIGUEZ. [SEAL.]
EURIPIDES RODRIGUEZ. [SEAL.]
JOSÉ JULIA. [SEAL.]

Before me Ricardo Nadal, clerk of the district court of the United States for Porto Rico, said court being a court of record having common law jurisdiction and a seal, personally appeared Felipe Rodriguez & José Julia and acknowledged under oath the execution of the within bond to be their free and voluntry act and deed.

7 In witness whereof I have hereunto set my hand and affixed the seal of the said court this 14th day of January, A. D., 1903.

RICARDO NADAL,
Clerk of the Dist. Court of the U. S. for Porto Rico,
By A. AGUAYO, *Deputy.*

UNITED STATES OF AMERICA, *District of Porto Rico,* } ss:

Felipe Rodriguez and José Julia, the persons who have signed as sureties on the within bond, being severally sworn, depose and say, each for himself and not either for the other, that he has visible property in the island of Porto Rico, which is worth the sum of five thousand and more dollars, over and above all his exemption as allowed by law, and also above all his just debts and legal liabilities.

(Signed) FELIPE RODRIGUEZ.
(Signed) JOSÉ JULIA.

Subscribed and sworn to before me this 14th day of Jan. A. D., 1903.

RICARDO NADAL,
Clerk of the Dist. Court of the United States for Porto Rico,
By A. AGUAYO, *Deputy.*

Bail Bond of Euripides Rodriquez.

UNITED STATES OF AMERICA, *District of Porto Rico,* } ss:

THE UNITED STATES
vs.
RAFAEL RODRIGUEZ and EURIPIDES RODRIGUEZ. } 59.

Know all by these presents, that Euripides Rodriguez as principal and Felipe Rodriguez and José Julia as sureties are held and firmly bound jointly and severally unto the United States of America in the sum of one thousand dollars ($1,000.00) for the payment

8 whereof well and truly to be made we bind ourselves, our heirs, executors, and administrators and assigns.

Signed and sealed with out seals this 14th day of January, 1903.

Now the conditions of this obligation are such, that if the said

Euripides Rodriguez shall duly appear before the district court of the United States for the district aforesaid, whenever called upon so to do by the said court in Porto Rico, then and there to answer to a certain indictment duly preferred against him the said Euripides Rodriguez and shall duly abide by any and all orders said court may make in this behalf, attending the sessions of said court, from day to day thereafter until the final adjudication of said case, then and in *the* event this obligation to be void, otherwise to remain in full force and effect.

EURIPIDES RODRIGUEZ. [SEAL.]
FELIPE RODRIGUEZ. [SEAL.]
JOSÉ JULIA. [SEAL.]

UNITED STATES OF AMERICA, *District of Porto Rico,* } ss:

Before me Ricardo Nadal, clerk of the district court of the United States for Porto Rico, said court being a court of record having common law jurisdiction and a seal, personally appeared Felipe Rodriguez and José Julia and acknowledged under oath the execution of the within bond to be their free and voluntary act and deed.

In witness whereof I have hereunto set my hand and affixed the seal of the said court this 14th day of Jan. A. D., 1903.

RICARDO NADAL,
Clerk of the Dist. Court of the U. S. for Porto Rico,
By A. AGUAYO, *Deputy.*

UNITED STATES OF AMERICA, *District of Porto Rico,* } ss:

Felipe Rodriguez and José Julia, the persons who have
9 signed as sureties on the within bond, being severally sworn, depose and say, each for himself and not either for the other that he has visible property in the island of Porto Rico, which is worth the sum of six thousand and more dollars, over and above all his exemptions as allowed by law, and also above all his just debts and legal liabilities.

(Signed) FELIPE RORIGUEZ,
JOSÉ JULIA.

Subscribed and sworn to before me this 14th day of Jan. A. D., 1903.

RICARDO NADAL,
Clerk of the Dist. Court of the U. S. for Porto Rico,
By A. AGUAYO,
Deputy Clerk.

And afterwards, to-wit, on the 24th day of Jan. in the year aforesaid came the defendants by their attorneys and filed in the clerk's

office of the court aforesaid a motion to quash the indictment in this cause which said motion is as follows, to-wit:

Motion to Quash Indictment.

The United States District Court in and for the District of Porto Rico.

UNITED STATES
vs.
RAFAEL RODRIGUEZ ET AL. } C. L., No. —.

Motion to quash indictment.

Now come the defendants herein, by and through their attorneys of record, Dexter and Hord, and move the court to quash and hold for nought the indictment heretofore presented against them, because they say:

1st. That the first count in the said indictment charges a con-
10 spiracy by and between these defendants to commit a crime against the laws of the United States whereas the charging part of the said count shows that no such conspiracy in fact existed and that each and every one of the acts charged as necessary to constitute the offence charged are alleged to have been committed by defendant Rafael Rodriguez acting alone and not in conjunction with the said defendant Euripides Rodriguez nor in furtherance of any such conspiracy between them.

2nd. That the second count in the said indictment fails to charge any conspiracy by and between the said defendants and fails to allege that defendant Euripides Rodriguez occupied at the time of the said alleged offence any position of trust by reason of which the said letters and funds therein set out could or did come into his care and custody.

3rd. That the said 2nd count of said indictment charges these defendants with two distinct offences, *i. e.*—embezzlement and theft, the elements of which offences are different and distinct one from the other, wherefore these defendants are not put upon notice or advised what offence they are called upon to defend herein.

Wherefore defendants pray that the said indictment be quashed and held for nought and that they go hence without day, etc.

RAFAEL RODRIGUEZ AND
EURIPIDES RODRIGUEZ,
Defendants,
By DEXTER AND HORD,
Their Attorneys.

And on the same day and year last aforesaid, an entry was made upon the journal of said court in said cause which said entry
11 is as follows, to-wit:

UNITED STATES
vs.
RAFAEL RODRIGUEZ and EURIPIDES RODRIGUEZ.

Now come the defendants by their attorneys Dexter and Hord and file a motion to quash the indictment herein and said motion being heard is overruled. In the opinion of the court the indictment charges the defendants with conspiring to commit an offence and that in pursuance to that, one of them did certain acts which owing to the alleged conspiracy were the acts of both. The use of the word embezzle in the indictment is surplusage. The charge is a larceny as described in the indictment.

The defendants except to the ruling of the court.

And afterwards, to wit, on the 26th day of Jan. in the year last aforesaid came the defendants herein by their attorneys and filed in the clerk's office of the court aforesaid a motion to quash panel in this cause, which said motion is in words and figures as follows, to-wit:

In the District Court of the United States for Porto Rico, Sitting at Ponce.

UNITED STATES OF AMERICA
vs.
RAFAEL RODRIGUEZ ET AL. } No. —.

Motion to Quash Panel of Petit Jurors.

Now come defendants above named, by their attorneys Dexter and Hord, and move the court to quash the panel of the jury
12 this the January term 1903, of this court, sitting at Ponce, for the reason that the names of the jurors composing the said panel, that is to say, the regular panel, were not publicly drawn from the box containing at the time when drawn the names of not less than three hundred persons possessing the qualifications prescribed by section — of the Revised Statutes which names shall have been placed therein by the clerk of this court and the jury commissioner thereof, but defendants state that the names contained in said jury box were not placed therein by the clerk and the said jury commissioner, the said clerk and the said commissioner did not place one name in said box alternately without reference to party affiliations until the whole number required were placed therein, but on the contrary defendants aver that the names from which said jurors composing the present panel of this court were drawn from said box, were placed therein by the deputy clerk of this court and by the deputy marshal, John L. Miller, in the month of July,

1902, the said jury commissioner, Andrés Crósas, was not present at the time, and all of the names placed in said box and from which the present panel was drawn were placed herein all at one time by the said deputy clerk and the said deputy marshal. John L. Miller, after all of the names had been previously taken out from the said jury box and had been revised by the said deputy marshal John L. Miller and the said deputy clerk. And defendant prays that in support of this motion this court will hear the oral testimony of the said jury commissioner, Andrés Crósas, John L. Miller, and Frank Antonsanti, the last a deputy or assistant clerk in the office of the clerk of this court, all of which said persons have been duly sub-
13 pœnaed to appear before this court for this purpose.

DEXTER & HORD,
Counsel for Defendant.

Rafael Rodriguez, defendant, being duly sworn, upon his oath says that the facts set forth in the foregoing motion are true, as he is credibly informed and verily believes.

RAFAEL RODRIGUEZ.

Subscribed and sworn to before me this January 26th, 1903.

A. AGUAYO,
D. C. U. S. Court.

And afterwards, to-wit, on the same day in the year last aforesaid an entry was made upon the journal of said court in said cause which said entry is as follows to-wit:

UNITED STATES
vs.
RAFAEL RODRIGUEZ and EURIPIDES RODRIGUEZ.

Now come the defendants herein and file motion to quash the regular panel of the petit jury at this term of court, and evidence being heard upon said motion it is overruled.

And afterwards, to-wit, on the same 26th day of Jan. in the year last aforesaid, an entry was made upon the journal of said court in said cause, which said entry is in words as follows:

UNITED STATES
vs.
RAFAEL RODRIGUEZ and EURIPIDES RODRIGUEZ.

The defendants herein were duly arraigned and pleaded not guilty
Thereupon said cause being called both sides answer ready.
14 Thereupon the marshal was directed to summon from among the bystanders 20 good, sober, upright men to serve on the panel in the case.

Thereupon the marshal summoned L. Danielson, C. Rostgard, F. L. Rockwood, R. A. Capó, P. L. Valdivieso, A. L. Casals, James Whatt, E. A. Homuth, A. Morales, Joseph Pou, F. W. Preston, Ulises Valdivieso, A. Cabrera, A. L. Martinez, Matias Vidal and T. E. Lee.

The jury as impaneled and sworn to try the case is composed of the following named persons, to-wit: L. Danielson, F. L. Rockwood, A. R. Capó, L. P. Valdivieso, James Whatt, A. Morales, Joseph Pou, F. W. Preston, Ulises Valdivieso, A. L. Martinez, T. E. Lee and F. H. Waters.

And afterwards to-wit, on the 27th day of Jan. in year last aforesaid an entry was made upon the journal of said court, in said cause, which said entry is as follows, to-wit:

UNITED STATES
vs.
RAFAEL RODRIGUEZ and EURIPIDES RODRIGUEZ.

Resumed the defendants being present. The jury hears all the evidence for the plaintiff.

And afterwards, on the 28th day of Jan. in the year last aforesaid, an entry was made upon the journal of said court in said cause, which said (entry) is as follows, to wit:

UNITED STATES
vs.
RAFAEL RODRIGUEZ and EURIPIDES RODRIGUEZ.

Resumed the defendants being present. The jury hears all the evidence for the defendants, the argument of counsel and charge of the court and retires.

15 And afterwards, to-wit, on the 29th day of Jan. in the year aforesaid, the following entries were made upon the journal of the court aforesaid, in said cause, to-wit:

UNITED STATES
vs.
RAFAEL RODRIGUEZ and EURIPIDES RODRIGUEZ.

Resumed the defendants being present.

Now comes the jury herein and reports the following verdict:

"We, the jury, find the defendants guilty on the first count of this indictment.

Ponce, Porto Rico, Jan. 29th, 1903.

T. E. LEE, *Foreman.*"

UNITED STATES
vs.
RAFAEL RODRIGUEZ and EURIPIDES RODRIGUEZ.

The defendants Rafael Rodriguez and Euripides Rodriguez having been this day found guilty herein, and being in open court, the court pronounced the following judgment, to-wit:

That the said Rafael Rodriguez be confined in the penitentiary of Porto Rico, for three years at hard labor, and that the said Euripides Rodriguez be confined in the penitentiary of Porto Rico for two years and pay to the United States of America a fine of five hundred dollars. ($500).

Thereupon there *was* issued out of the clerk's office of the court aforesaid, two certain final commitments in this cause directed to the marshal of said district and against the said defendants, which said final commitments are clothed in the words and figures following, to-wit:

Final Commitment.

District Court of the United States, District of Porto Rico.

16 THE UNITED STATES
vs.
RAFAEL RODRIGUEZ and EURIPIDES Rodriguez. } Indictment No. 59. Ponce.

The defendant Rafael Rodriguez having been found guilty as charged in the said indictment for larceny from letter etc. sec. 5467 R. S.

Thereupon the court pronounced the following sentence, to-wit: That the said Rafael Rodriguez be imprisoned in the penitentiary of Porto Rico for the term of three years (3) at hard labor.

This, therefore, is to command the marshal of said district to take the body of the said Rafael Rodriguez and commit the same to the penitentiary of Porto Rico pursuant to the above sentence.

Witness the Honorable William H. Holt, judge of the district court of the United States, district of Porto Rico, this 29th day of January, A. D. 1903, and in the 127 year of the Independence of the United States of America.

Attest: RICARDO NADAL,
Clerk of the Dist. Court of U. S. for Porto Rico,
By H. H. SCOVILLE, *Deputy.*

Final Commitment.

District Court of the United States, District of Porto Rico.

THE UNITED STATES
vs.
RAFAEL RODRIGUEZ and EURIPIDES Rodriguez. } Indictment No. 59th. Ponce.

The defendant Euripides Rodriguez having been found guilty as charged in the said indictment for larceny from letter, etc., 5467th sec. R. S.,

Thereupon the court pronounced the following sentence: to-wit:

17 That the said Euripides Rodriguez be imprisoned in the penitentiary of Porto Rico for the term of two (2) years and that he pay a fine of five hundred ($500.) dollars.

This, therefore, is to command the marshal of said district to take the body of the said Euripides Rodriguez and commit the same to the penitentiary pursuant to the above sentence.

Witness: the Honorable William H. Holt, judge of the district court of Porto Rico, this 29th day of January, A. D., 1903, and in the 237th year of the independence of the United States of America.

Attest:

RICARDO NADAL,
Clerk U. S. District Court of Porto Rico.
By H. H. SCOVILLE, *Deputy.*

And afterwards, to-wit, on the second day of February in the year aforesaid, came the defendants by their attorneys and filed in the clerk's office of said court a motion in arrest of judgment in this cause, which said motion is in words and figures as follows, to-wit:

In the United States District Court in and for the District of Porto Rico, Sitting at Ponce.

UNITED STATES
vs.
RAFAEL RODRIGUEZ and EURIPIDES RODRIGUEZ. } No. 59.

Motion in Arrest of Judgment.

Now come the defendants herein, Rafael Rodriguez and Euripides Rodriguez, by their attorneys herein, Dexter and Hord, and move the court to arrest the judgment herein rendered against them for the following reasons, to-wit:

1. That the grand jury of this court which found the indict-
18 ment herein against them and on which they were tried and convicted was not selected or drawn according to law, but that it was drawn without regard to the prescription and requirements of the statute in such cases made and provided.

In this regard these defendants say that the clerk of this court, Ricardo Nadal, took no part in the selection of the names which were to be placed in the jury box, but that the other jury commissioner of this court, after directing a deputy clerk of the said Nadal to prepare lists and tickets of persons did place all the said lists and tickets with names in said box himself, and that from the tickets and names so placed in said box by said one commissioner the said grand jury was subsequently drawn. Defendants further say that the said deputy clerk was not and is not a person authorized under the law to take part in the selection, drawing or otherwise designating the grand and petit juries of this court; that he has not been theretofore appointed by this court for that purpose; that he was not shown to be of a different political affiliation from the said Andrés Crósas, the jury commissioner heretofore appointed by this court; and that said names were not placed in said box alternately by said Crósas, commissioner, and said Nadal, clerk.

Wherefore these defendants pray the court to arrest the judgment heretofore rendered against them and to dismiss this accusation herein against them and as they will ever pray, etc.

(Signed) RAFAEL RODRIGUEZ.
EURIPIDES RODRIGUEZ,
Defendants,
By DEXTER & HORD,
Their Attorneys of Record.

19 I, Rafael Rodriguez, one of the defendants in the above entitled and numbered cause being duly sworn, on my oath do depose and say that the foregoing allegations are to the best of my information and belief, true.

(Signed) RAFAEL RODRIGUEZ.

Sworn to before me this 2nd day of February, ~~1903~~.
A. AGUAYO, *D. C.*

And afterwards, to-wit, on the 3rd of Feb. in the year last aforesaid an entry was made upon the journal of said court in said cause which said entry is in words as follows, to-wit:

UNITED STATES
vs.
RAFAEL RODRIGUEZ and EURIPIDES RODRIGUEZ.

Now come the defendants herein and call up their motion heretofore filed in arrest of the judgment, the same being heard the court makes the following order.

Order.

The ground of this motion is that the grand jury that found the indictment was not drawn or selected according to law. It appears the regular jury commissioner, Andrés Crósas and the deputy clerk, Frank Antonsanti, acted in doing so, the clerk of the court being absent on sick leave. There is no charge of corruption or that the selection was not by impartial persons. The general rule as to provisions of law for the selection of jurors, is, that they are only directory. There appear to have been some irregularities, and not an exact compliance with the terms of the statute; but both the commissioner Crósas, and the deputy clerk made the selection and both were present all the time, during the selection and no one else
20 took part in it. It is not shown there are not of opposite politics and this is to be presumed. There was no such material irregularity as vitiated the panel, but a substantial compliance with the statute, upon the subject.

The motion in arrest of judgment is overruled.

And afterwards, to-wit, on the same day in the year aforesaid, came the defendants herein by their attorneys and filed in the clerk's office of said court a certain motion for a new trial, in this cause, which said motion is as follows, to-wit:

In the United States District Court in and for the District of Porto Rico, Sitting at Ponce.

THE UNITED STATES
vs.
RAFAEL RODRIGUEZ ET AL. } No. 59.

Motion for a New Trial.

Now come the defendants herein, Rafael Rodriguez and Euripides Rodriguez, by their attorneys Dexter & Hord, and move the court to set aside the verdict heretofore found by the jury herein and the judgment and sentence thereon pronounced and entered by this court herein against these defendants and to grant them a new trial herein, for the following reasons, to-wit:

1. Because the court erred in admitting in proof over the objection of defendants, a letter purporting to be written by one F. (or T.) Leon to the postmaster at Salinas without proof that the said defendants or either of them had written said letter or sent it to the said postmaster.

2. Because the court erred in this, to-wit: that having as
21 aforesaid admitted the said letter in evidence on the statement by counsel for the prosecution that he would afterward

connect it with these defendants or one of them, and the prosecution having thereafter introduced no evidence whatever tending to connect defendants, or either of them with the writing or sending of the said letter, the court did not withdraw the same from the consideration of the jury in this case.

3. Because the court erred in admitting in evidence, over the objection of these defendants, the seven applications for money orders at the said Salinas postoffice without proof that the same had been written by said defendants or either of them, or that they or either of them were connected with the same in any manner whatever, and that it further erred in this, to-wit: that having admitted said seven applications, as aforesaid, on the statement of counsel for the prosecution that he would later connect defendants, or one of them with the same, and the prosecution having failed so to do, the court did not withdraw the said applications from the consideration of the jury herein.

4. Because the court erred in admitting in evidence over the objection of defendant Euripides Rodriguez, and in not afterward striking the same from the record in this cause in so far as said defendant was concerned, the conversations testified to by the witnesses McLeod and Boiseneau, alleged by them to have been had with the said defendant Rafael Rodriguez, for the following reasons, to-wit:

1. That said conversation- with the said Rafael Rodriguez were allowed to be testified to, over the objection of this defendant, before the prosecution had proved the existence of any conspiracy between the two defendants herein;

22 2. That said conversations were not concerning the existence of any conspiracy between this defendant and the said Rafael Rodriguez;

3. Because the said conversation having been had with the said Rafael Rodriguez alone and the facts therein detailed not being in the furtherance of any such conspiracy, should by the court have been limited as to their legal effects, to the said Rafael Rodriguez;

5. Because the court erred in admitting in evidence, over the objection of these defendants, the cash books of the said Rafael Rodriguez as post-master at Coamo, showing that the said post-master had on hand from November 1st to 7th, 1902, a large sum of money, and in afterward enlarging the admission of said books from the first day of July, 1902, to the last day of November, 1902, because the same was irrelevant, incompetent and immaterial to the issues herein and tended to prejudice the rights of these defendants by causing it to appear that the defendant Rafael Rodriguez was not as such post-master complying with the postal regulations.

6. Because the court erred in refusing to allow the defendants, when cross-examining one José de los Reyes, a witness for the prosecution, to ask said witness whether it was not true that during the time of the Spanish government in Porto Rico, he, the said witness, had not been arrested and imprisoned for complicity in postal frauds, and this specially because the said José de los Reyes had already

been shown to have been an inmate of the house of the post-master at Salinas and it was an issue in this case whether the registered package in question ever left said postiffico, and if it did in what condition.

23 7. Because the court erred in admitting the testimony of the witness Skinner, a postal employee of the Ponce post office to the effect that some time before the said 1st day of November 1902, a man whom he believed to be but was not certain as to, had asked him if money orders could be purchased at the Salinas postoffice, as the said testimony was incompetent, irrelevant and immaterial and uncertain.

8. Because after the prosecution had rested, the court erred in not, at the motion of defendant Euripides Rodriguez, limiting the testimony of the said witnesses McLeod and Boiseneau as set out in the fourth ground of this application, to the said Rafael Rodriguez.

9. Because one of the witnesses against these defendants having been one Nicolas Jordan, the postmaster at Aibonito and by far the most important witness against them; and the said Jordan having testified that the said registered package arrived at his said office minus the money in question herein after having left the office of defendants (the next office to said Jordan's); and defendants having offered herein in their own defence and as affecting the credibility of the said witness, an original indictment against the said witness pending in this court and which said indictment showed that the said Jordan was at that time under indictment in this court for perjury and that the alleged false statement was in connection with this same transaction and bearing directly upon his statements concerning the condition in which said registered package reached his said office, the court erred in this, to-wit: that it refused to allow defendants to read the said indictment to the jury herein and limited defendants to proving thereby that said Jordan was under indictment in this court for perjury and that it refused to allow these defendants to show by the said indictment the particulars of the said charge.

24 10. That the court erred in charging the jury herein as follows: to-wit: "That the mail remained in the Coamo postoffice for several hours. I do not recollect the time, but at least several hours. In other words, the testimony tends to show that there was an opportunity at that office to take this money,—that opportunity was given to unfold this package and take this money."

Defendants say that the said charge tended to and did prejudice their rights herein and deprived them of that fair and impartial trial to which they had a right in that:

1. That it tended to impress on the jury that these defendants were in some way responsible for the mail remaining for several hours at the said Coamo postoffice, whereas it had already been shown that by the arrangement of the mail schedules the said mail was necessarily compelled to be at said office several hours each day.

2. That the court gave undue prominence to the fact that the mail was compelled to remain at said office for several hours and by not mentioning the fact that other post-masters along the route had access to the said package (although for a shorter period) and thereby tended to impress on the said jury that these defendants alone could have taken said money.

3. Because said charge, ignoring the condition in which said package left the Salinas postoffice (tied around with a string which could well have been removed in a minute or two) tended to impress upon the jury that several hours' time *were* necessary to the abstraction of the said money and therefore prejudiced the rights of these defendants inasmuch as the said Coamo postoffice is the only one on said route where the said mail is compelled to stop for several hours.

11. That the court erred in charging the jury as follows:
25 to-wit: "I say to you as a matter of law, that if these defendants entered into a conspiracy by which one or either of them was to write a letter to the postmistress at Salinas, and $700.00 of the postoffice money in the postoffice where one of these defendants was postmaster was to be taken out and taken there to get money orders with, that then the money as San Juan was the depositary of money having to pass through Coamo—that if they entered into a conspiracy by which money was to be taken out of the postoffice funds there and sent to Salinas and these postoffice orders obtained on the Coamo office and then the money was to be intercepted by them or either of them on its return and taken out of any package and that was done, why, then they are guilty. And if there was conspiracy between them then both are guilty. Although only one abstracted the money."

Defendants say that the said charge was calculated to and did mislead the jury, in this:

1. That the first part of the said charge in effect instructs the jury that defendants are guilty if they entered into such a conspiracy as is therein set out, without taking into account or charging them upon the question that if they did so agree among themselves nevertheless they must have performed some overt act in the carrying out of the said conspiracy before the jury would be justified in finding them guilty.

2. That the words "and that was done" toward the end of the first part of the said charge do not make the same clear but rather tend to confuse the meaning, inasmuch as it does not appear whether those words refer to the entering into an agreement to take said money or to the actual taking of it.

12. Because the court erred in overruling and denying the
26 motion heretofore made herein by these defendants to quash the panel herein for the reason that the said jury were not selected and impaneled as required by the law for such cases made and provided and as in the said motion set out.

13. That the court erred in overruling and denying the motion

heretofore made by these defendants to arrest the judgment heretofore rendered herein against them for the reasons as set out in the said motion that the grand jury which found the bill of indictment herein against them were not as in the said motion set out, drawn, selected and impaneled as required by law and were not for that reason a lawfully constituted grand jury for said purpose.

14. That the court erred in overruling and denying the motion heretofore made herein by these defendants to quash the indictment herein pending against them for the reasons set out in the said motion, and particularly in not quashing the said indictment for the reasons that the same is duplicitous and charges two distinct offenses in each of the counts hereof, to-wit—theft and embezzlement.

15. That the court, on the said motion to quash the said indictment, having ruled that the word "embezzlement" used in the said two counts of the said indictment was surplusage and that the said indictment in effect charged in the first count only a conspiracy to commit theft and in the second count theft, therefore the court erred in admitting any evidence herein which tended to show that said money and registered package came into the hands of defendants rightfully and in the course of their employment as postmaster and assistant postmaster, respectively, inasmuch as those facts are an element in the crime of embezzlement but not of theft.

27 16. That the court having ruled as in the next preceding clause hereto set out, therefore it erred in refusing to give, as requested by the defendants, the following charge to the jury, towit: "If from the evidence you shall believe that the said package or letter came into the possession of defendants lawfully and in course of their employment then you are instructed that they are not guilty under this indictment."

17. That the said verdict is not responsive to the issues herein in this, to-wit: That in its charge to the jury the court instructed them as follows, as finding a verdict herein: "If you should find both of these defendants guilty under the first count, you would say: 'We the jury find the defendants guilty under the first count.' If you do not find them guilty under the first count, you say: 'We the jury find the defendants not guilty under the first count.' You then go to the second count. If you believe that without any conspiracy they stole this money from the package and believe that to the exclusion of a reasonable doubt, you say: 'We the jury find the defendants guilty under the second count.' Or if you find that neither of them is guilty you say: 'We the jury find the defendants not guilty under the second count.' Or if you find one of them guilty under the second count, and that there was no conspiracy, then you say: 'We the jury find the defendant (giving his name) guilty under the second count and the defendant (giving his name) not guilty under the second count.' In other words you write out whatever you find as to both defendants or either of them under both or either of these counts in the indictment."

Whereas the said verdict ignores the said second count in the said

indictment and passes solely and only on the first of the said
28 counts and neither finds one or both of the said defendants guilty or not guilty of the charge of theft of money from the United States mails theretofore in manner and form as in the said indictment set out and contained submitted to them for decision and for their verdict thereon.

18. Defendants say that inasmuch as the fact that said money had been lost was an admitted fact in this case as shown by the charge of the court on that point and inasmuch as the court in charging the jury upon the first of said counts used the following language as the law of this case in so far as the conspiracy was concerned, *i. e.:*

"Of course you must believe *that* the existence ofthe conspiracy to the exclusion of a reasonable doubt, both as to the formation of a conspiracy and as to the taking of the money. That if the first count in the indictment—that there was a conspiracy and that in carrying out that conspiracy one of them took the money out of a letter or letters." Therefore these defendants say that the said verdict is a legal contradiction because the first count in the said indictment charges that Rafael Rodriguez, in furtherance of the alleged conspiracy, took said money, and it therefore follows from the said charge as applied to the said first count that if the said Rafael Rodriguez is guilty under the said first count he must be so also under the second count, but as to whether the jury found him so or not the said verdict is silent.

19. Defendants say that the court erred when it charged the said jury (as set out in paragraphs 11 and 18 hereof)—"* * * and then the money was to be intercepted by them or either of them on its return and taken out of any package and that was done, why, then, they are guilty. And if there was a conspiracy between them then
both are guilty although only one abstracted the money, and
29 that there was a conspiracy and that in carrying out that conspiracy one of them took the money out of a letter or letters;" for the following reasons, to-wit:

That the said charge authorized the jury to find the defendants guilty if either Rafael or Euripides took the said money from the said letter or letters (that is, as to the first charge); whereas the said indictment in the first charge thereof specifically and positively limits the charge of taking the said money from said letter or letters to the said Rafael Rodriguez and just as specifically and positively excludes said Euripides Rodriguez from that portion of said accusation.

20. These defendants say that with the utmost respect for the court and a most earnest disclaimer of any intention to be disrespectful to or in contempt of this court, that in charging the said jury the court through inadvertence, while commenting on the evidence adduced on the trial of this cause did so only as to that part of the evidence introduced by the prosecution and absolutely and entirely failed to state any portion of the exculpatory evidence

brought forward by these defendants in their behalf, by reason of which omission on the part of this honorable court these defendants say that they were grievously prejudiced in their said case and undue prominence given to the said testimony against them while the importance of their testimony in defence was thereby minimized, and therefore that they did not have a fair trial herein.

21. These defendants say that the said verdict and the sentence and judgment thereon are contrary to the evidence herein for that there was no evidence whatever introduced on the trial of this cause tending to show a conspiracy between defendants for the said unlawful purpose.

30 22. And these defendants say that in addition to the foregoing grounds for a new trial herein they submit to the court that since the trial of the said cause they have discovered other and further evidence tending to show that the said Nicolas Jordan the principal witness against them, testified falsely on the trial hereof and that in truth and in fact the said Jordan did not know and did not remember in what condition the said registered package was when it passed his said office and that when he the said Jordan testified in this case that the envelope containing the proper money was not in said package when it reached the Aibonito postoffice he was consciously testifying to something he knew to be untrue. And defendants say that if the said Jordan had testified only to the truth as he knew it these defendants could not and would have not been convicted in this case. Defendants say the said newly discovered testimony is material to their defence; that they had no knowledge of its existence before or during the trial of said case and could not procure the same by the exercise of any reasonable diligence on their part and that they submit herewith in support of this part of their motion for a new trial, the affidavits of Felix Lino Rivera, Carlos Casanova and Pablo Vicenti, which they ask to be considered as a part of this motion.

For the foregoing reasons these defendants pray the court to set aside the said verdict, judgment and sentence and to grant them a new trial herein.

RAFAEL RODRIGUEZ &
EURIPIDES RODRIGUEZ,
Defendants,

By DEXTER & HORD,
Their Attorneys.

In the United States District Court in and for the District of Porto Rico, Sitting at Ponce.

31 THE UNITED STATES
vs.
RAFAEL RODRIGUEZ ET AL. } No. 59.

Affidavit of Felix Lino Rivera.

I, Felix Lino Rivera, being duly sworn, on my oath do depose and say: That I am a resident of Ponce, Porto Rico, and keeper of the hotel in the said city known as the "Hotel Ponceño" and that I know Nicolas Jordan and have known him for several years; that when the said Jordan came to Ponce to attend the sitting of the Federal court and to appear before the grand jury thereof he boarded at my house or hotel; that on the day he, the said Jordan, appeared before the said grand jury he subsequently told affiant on several occasions, and in the presence of several persons, among others Carlos Casanova and Pablo Vicenti, that he could not truthfully testify to any fact against him but that having so stated before the said grand jury he was afterwards threatened and abused by the post-office inspector who accused him of telling an untruth to the said grand jury. Affiant says that he afterward saw the said Jordan in jail and that he then and on divers occasions afterward, told affiant that he knew nothing against the said Rafael Rodriguez and did not know in what condition the registered package from Salinas was when it passed Aibonito and that he could not and would not swear against his conscience. Affiant further says that he was in court when the said Jordan testified in the case against said Rafael Rodriguez and Euripides Rodriguez and heard his testimony and that it was contrary in the foregoing particulars to what said Jordan has, aforesaid, told affiant and said other persons in his presence.

(Signed) FELIX LINO RIVERA.

32 Subscribed and sworn to before me this 2nd day of February A. D. 1903.

RICARDO NADAL, *Clerk*,
By A. AGUAYO, *Deputy*.

In the United States District Court in and for the District of Porto Rico, Sitting at Ponce.

THE UNITED STATES
vs.
RAFAEL RODRIGUEZ ET AL. } No. 59.

Affidavit of Pablo Vicenti.

Pablo Vicenti, being duly sworn, on his oath deposes and says That on the day during the session of the United States court at

Ponce, Nicolas Jordan stated to him and in his presence that after he had testified before the grand jury of the said court, the post-office inspector had public- abused him and accused him of having in his said declaration before the said grand jury sworn falsely.

Affiant states further that the said Jordan at that time stated to this affiant and in his presence that the reason why the said post-office inspector had so abused him was because he, the said Jordan, would not testify that when the package from Salinas containing money reached the said Aibonito postoffice it had been broken open and part of it gone and that the said Jordan then and there stated to this affiant and in his presence that he could not swear to those facts as they were not true. And the said affiant Vicente says that he is an employee of Sucesores de Mayol Hnos. and Co. and a resident of Ponce.

(Signed) P. VICENTI.

Subscribed before me this 2nd day of February A. D., 1903.

RICARDO NADAL, *Clerk*,
By A. AGUAYO, *Deputy*.

33 In the United States District Court in and for the District of Porto Rico, Sitting at Ponce.

UNITED STATES
vs.
RAFAEL RODRIGUEZ ET AL. } No. 59.

Affidavit of Rafael Rodriguez and Euripides Rodriguez.

Rafael Rodriguez and Euripides Rodriguez being duly sworn on oath depose and say:

That at the time of the trial of this cause they did not know of the existence of the testimony and facts set out in the 22 ground for a new trial set out in the motion hereto attached and that they could not with any reasonable diligence on their part have discovered the same; that it has been discovered by them since the trial of this case and that it is material to said case, and if it had been had on the said trial would have produced a different result therein and that these defendants would not probably have been convicted herein.

(Signed) RAFAEL RODRIGUEZ.
EURIPIDES RODRIGUEZ.

Subscribed and sworn to before me this the 2nd day of February, 1903.

RICARDO NADAL, *Clerk*,
By A. AGUAYO, *Deputy*.

And afterwards, to-wit, on the 6th day of February in the year aforesaid an entry was made upon the journal of said court in said cause which said entry is as follows, to-wit:

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vs.
RAFAEL RODRIGUEZ and EURIPIDES RODRIGUEZ.

Affidavits of D. E. McLeod and David A. Skinner, marked
34 filed herein on February 5th, 1903, are now noted of record, also copy of portion of the court stenographer's notes of evidence *are* filed, and the motion for a new trial herein is now heard and submitted and overruled; defendants except. By agreement of U. S. attorney and attorneys for defendants Dexter & Hord, 90 days is given to present and file bill of exceptions.

And afterwards, to-wit, on the same day in the year aforesaid an entry was made upon the journal of said court in said cause, which said entry is in words as follows, to-wit:

UNITED STATES
vs.
RAFAEL RODRIGUEZ and EURIPIDES RODRIGUEZ. } 59.

Now come the defendants herein by their attorneys Dexter & Hord and file a petition for appeal and the defendants asking for an appeal and not a writ of error same is granted.

The amount of appeal bond of Rafael Rodriguez is fixed at four thousand dollars and that of Euripides Rodriguez at three thousand dollars, the bonds to be taken and approved by the clerk of this court, and upon their execution the same in each case is to operate as a supersedeas.

And afterwards, to-wit, on the same day came the marshal of the said district and returned into the clerk's office of the court aforesaid the two writs of commitment heretofore issued in said cause against the said defendants with his proceeding endorsed thereon as follows, to-wit:

Return.

Returned unexecuted, court having allowed an appeal to the Supreme Court of the United States and within named Rafael Rodriguez having furnished required bond he was released from custody at Ponce, P. R. on Feb. 6, 1903.

E. S. WILSON,
U. S. Marshal,
By H. S. HUBBARD, *Deputy.*

35 *Return.*

Returned unexecuted, court having allowed an appeal to the Supreme Court of the U. S. and within named Euripides Rodriguez having furnished required bond he was released from custody at Ponce, P. R. on Feb. 6, 1903.

E. S. WILSON,
U. S. Marshal,
By H. S. HUBBARD, *Deputy.*

In the United States District Court in and for the District of Porto Rico.

UNITED STATES
versus
RAFAEL RODRIGUEZ ET AL. } No. 59.

Appeal Bond.

Know all men by these presents: That we Euripides Rodriguez as principal and Florencio Santiago of the city of Coamo, in the island of Porto Rico, and Felipe Rodriguez of the city of Coamo also in the island of Porto Rico, as sureties, are held and firmly bound unto the United States of America in the full and just sum of three thousand dollars (3000) to be paid to the said United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this the sixth day of February in the year of our Lord nineteen hundred and three.

Whereas lately at a session of the United States district court in and for the district of Porto Rico, sitting at Ponce in the said district, in a criminal prosecution therein pending in which The United States of America was plaintiff and Rafael Rodriguez and Euripides Rodriguez were defendants, in which the said defendants were duly charged by indictment presented in the said court with conspiracy to
36 steal money from a letter or letters in transit through the United States mails, and in a second count thereof with stealing the said money, upon which indictment the jury found the defendants guilty under the first count thereof and the said court having sentenced the said Rafael Rodriguez to three years of imprisonment at hard labor in the penitentiary at Porto Rico, and the said defendants having obtained from the said court an order of appeal herein to the Supreme Court of the United States to reverse the said judgment and sentence herein pronounced against them as aforesaid.

Now therefore the condition of the above obligation is such that

if the said Euripides Rodriguez shall prosecute his said appeal to effect and shall well and truly be and appear before the said United States district court in and for the district of Porto Rico, from day to day and from term to term thereof to abide the judgment of the said Supreme Court of the United States in the matter of the said appeal, then the above obligation is to be void otherwise to remain in full force and virtue.

(Sig.) FELIPE RODRIGUEZ. [SEAL.]
FLORENCIO SANTIAGO. [SEAL.]

Sufficiency of the sureties on the foregoing bond approved this the sixth day of February, 1903.

RICARDO NADAL, *Clerk*,
[SEAL.] By A. AGUAYO, *Deputy*.

I, Florencio Santiago, being duly sworn, on my oath depose and say that I have in my own right and am worth and have visible property in Porto Rico, free from incumbrances and liable
37 to execution to and over my just debts and liabilities at least the amount of three thousand dollars.

FLORENCIO SANTIAGO.

Subscribed and sworn to before me this the 6th day of February, A. D. 1903.

RICARDO NADAL, *Clerk*,
By A. AGUAYO, *Deputy*.

I, Felipe Santiago, being duly sworn on my oath depose and say that I have in my own right and am worth and have visible property in Porto Rico, free from incumbrances and subject to execution and over my just debts and liabilities to at least the amount of three thousand dollars.

FELIPE RODRIGUEZ.

Subscribed and sworn to before me this the 6th day of February, A. D. 1903.

RICARDO NADAL, *Clerk*,
By A. AGUAYO, *Deputy*.

In the United States District Court in and for the District of Porto Rico.

UNITED STATES
versus } No. 59.
RAFAEL RODRIGUEZ ET AL.

Appeal Bond.

Know all men by these presents: That we, Rafael Rodriguez as principal and Florencio Santiago of the city of Coamo, in the island

of Porto Rico, and Felipe Rodriguez of the city of Coamo also in the island of Porto Rico, as sureties, are held and firmly bound unto the United States of America in the full and just sum
38 of four thousand dollars (4,000) to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this the sixth day of February in the year of our Lord nineteen hundred and three.

Whereas lately at a session of the United States district court in and for the district of Porto Rico, sitting at Ponce in the said district, in a criminal prosecution therein pending in which The United States of America was plaintiff and Rafael Rodriguez and Euripides Rodriguez were defendants, in which the said defendants were duly charged by indictment presented in the said court with conspiracy to steal money from a letter or letters in transit through the United States mails, and in a second count thereof, with stealing the said money, upon which indictment the jury found the defendants guilty under the first count thereof, and the said court having sentenced the said Rafael Rodriguez to three years of imprisonment at hard labor in the penitentiary of Porto Rico, and the said defendants having obtained from the said court an order of appeal herein to the Supreme Court of the United States to reverse the said judgment and sentence herein pronounced against them as aforesaid.

Now therefore the condition of the above obligation is such that if the said Rafael Rodriguez shall prosecute his said appeal to effect and shall well and truly be and appear before the said United States district court in and for the district of Porto Rico, from day to day and from term to term thereof to abide the judgment of the said Supreme Court of the United States in the matter of the said appeal, then the above obligation is to be void otherwise to
39 remain in full force and virtue.

(Sig.) RAFAEL RODRIGUEZ. [SEAL.]
FELIPE RODRIGUEZ. [SEAL.]
FLORENCIO SANTIAGO. [SEAL.]

Sufficiency of the sureties on the foregoing bond approved this the sixth day of February, 1903.

RICARDO NADAL, *Clerk*,
By A. AGUAYO, *Deputy*.

We, Florencio Santiago and Felipe Rodriguez being duly sworn on our respective oaths do say: That we and each of us are worth in our own right and are worth and have visible property in Porto Rico free from incumbrances and subject to execution and over my legal debts and liabilities to the amount of at least four thousand dollars each.

(Sig.) FELIPE SANTIAGO.
(Sig.) FLORENCIO SANTIAGO.

Subscribed and sworn to before me this the sixth day of February A. D. 1903.

RICARDO NADAL, *Clerk*,
[SEAL.] By A. AGUAYO, *Deputy*.

40 *Stipulation.*

Filed April 6, 1903.

In the District Court of the United States for Porto Rico.

UNITED STATES
vs.
RAFAEL RODRIGUEZ ET AL. } Pending at Ponce.

Stipulation of further time in which to file bill of exceptions.

The United States, by N. B. K. Pettingill district attorney, and defendants, by their attorneys Dexter and Hord hereby agree that defendants shall have further time of thirty days within which to file their bill of exceptions herein.

N. B. K. PETTINGILL,
District Attorney.
DEXTER AND HORD,
Att'ys for Def't.

Stipulation.

Filed May 29th, 1903.

In the District Court of the United States for Porto Rico.

UNITED STATES
vs.
RAFAEL RODRIGUEZ ET AL. }

Stipulation.

Plaintiff and defendants herein by their respective counsel hereby agree that defendants shall have until August 9th, 1903, to file their bill of exceptions herein.

N. B. K. PETTINGILL,
U. S. Attorney.
DEXTER AND HORD,
Att'ys for Def'ts.

By virtue of above stipulation time extended till August 9, 1903.

WM. H. HOLT, *Judge.*

41 *Stipulation.*

In the United States District Court for Porto Rico, Sitting at Ponce.

UNITED STATES
vs.
RAFAEL RODRIGUEZ ET AL.

Stipulation.

Now come the parties hereto by their respective attorneys and agree *and* the bill of exceptions now agreed on tendered herein shall be signed and filed as of the 3rd, day of August 1903.

N. B. K. PETTINGILL,
U. S. District Attorney.
DEXTER AND HORD,
Attorneys for Defendants.

42 *Bill of Exceptions.*

Filed Oct. 8th, 1903, as of Aug. 3, 1903.

Be it remembered, that at a term of the district court of the United States for the district of Porto Rico, held in the city of Ponce on the twenty-seventh day of January, A. D., 1903, a cause therein pending between The United States, as plaintiff, and Rafael Rodriguez and Euripides Rodriguez, as defendants, came on to be heard before the Honorable William H. Holt, judge of the said court, at which time came the said parties, by their respective attorneys, and thereupon the said issues in manner aforesaid joined between the said parties came on to be tried; and the jurors of the jury aforesaid, whereof mention is within made, being called, likewise came and were sworn to try the issues upon the merits of said cause in manner aforesaid joined.

And thereupon, the United States produced as a witness one GUILLERMA DE CINTRON, who, being first duly sworn, testified as follows:

My name is Guillerma de Cintron; I live in Salinas, Porto Rico and am the postmistress there. I have been postmistress for ten months. That office has been a money order office from the 22nd day of July, 1902. The postmaster at Coamo, Rafael Rodriguez, instructed me in the duties of my office when it was made a money order office. My husband, before he died, was postmaster, and I used to help him.

About the first day of November last some people came to my office to buy some postal orders. On the 1st of November a letter was sent from Santa Ysabel directed to me and signed by F. Leon, agent. (Witness was shown a letter.) Yes, this is the same letter.

And thereupon to further maintain the issues on its part, the United States offered to introduce in evidence a certain letter,
43 dated at Santa Ysabel, Porto Rico, November 1st, 1902, and purporting to be signed by one F. Leon, agent, directed to the postmaster at Salinas and advising of the remittance of $700.00 for postoffice money orders from that office, to which defendants, by their counsel, objected, because said writing was irrelevant to the issue and incompetent as F. Leon was not connected with this case and it had not been shown that either of the defendants had written this letter; and thereupon the said judge decided that said letter be admitted in evidence, to which decision the defendants, by their counsel, did then and there except for the reasons stated above.

Said letter, being admitted, was marked for identification Exhibit A for Government, and is in words and figures as follows:

"EXHIBIT A (TRANSLATION).

SANTA YSABEL, *Nov. 1st*, 1902.

To the postmaster at Salinas:

I was yesterday at Ponce and the postmaster there told me that you could give me postoffice orders for Coamo, so that I send you $700.00 in order that you may send them to me in postoffice orders. I also send you $2.10 for the payment of the orders.

Respectfully,

(Signed) F. LEON, *Agent.*"

A boy 17 or 18 years old, and whom I do not know, brought that letter to me and with the letter he had a leather bag and also seven applications for money orders. These applications were written by hand. I have similar ones in my office. I could recognize them if they were shown me. Yes, these are they. He delivered me the letter and the money,—seven hundred dollars.

44 And thereupon, to further maintain the issues on it- part the United States offered to introduce in evidence seven certain documents known as applications for money orders, more fully described later, to which proposed evidence the defendants by their counsel objected, for the reason that it was irrelevant to the issue and incompetent, as F. Leon has not been connected with this case and it is not shown that either of these defendants made these applications, or any of them; whereupon the said judge did decide that said documents be admitted in evidence, to which decision, the defendants, by their counsel, did then and there except for the reasons stated above.

Said documents, for identification, were marked Exhibits B & BB for Government, and are identical in form and contents with the exception of the serial number. They run from No. 90 to No. 96 inclusive, each is for $100.00, each is payable to P. R. Patron, Coamo, and sent by F. Leon. A literal copy of one of said applications, which will serve as a copy of each of them, is in words and figures as follows, to-wit:

Domestic. (Form No. 6001.)
30.

(Stamp of Salinas P. O. dated Nov. 1, 1902.)

$100.00. *Application for Money Order.* No. 90.

Amount—Cien dollars, — cents.
Sent to P. R. Patron.
City or town: Coamo.
Street and No. ——
State: ——
Sent by F. Leon,
Address of sender: ——

This money that he gave me for the money orders was in paper and silver; $131.00 was in silver and the balance in bills. This was on Saturday after breakfast and on Sunday I filled out the
45 applications. I sold the money orders on Saturday. I then kept the money there in order to arrange the certificate and sent it to the city. I made out these money orders. (Upon being shown these money orders) Yes, these are the ones; I recognize them.

And thereupon, to further maintain the issues on its part the United States offered as evidence seven (7) certain United States postal money orders, to be more fully described later, to which proposed evidence the defendants, by their counsel objected, for the reason that it was irrelevant to the issues and incompetent, as the defendants had not been connected in any way by the testimony with said orders; whereupon the said judge admitted said documents in evidence, to which decision the defendants, by their counsel, excepted, for the reasons above stated.

These seven money orders are marked for identification Exhibit C for Government, and are alike as to form and contents with the exception of the serial number. They run from 90 to 96 inclusive, each is for $100.00, each payable to P. R. Patron. An exact copy of one of said orders, and which will serve as a copy of each of them, is in the words and figures as follows, to-wit:

United States Postal Money Order. No. 90.

SALINAS, PORTO RICO, *Noviembre* 1, 1902.

To be stamped here
(Coamo, P. R. Nov. 3, 1903.
M. O. B.)
by paying office.

Pay to the order of P. R. Patron $100 dollars — cents.
One hundred dollars, — cents.
To the postmaster at Coamo, P. R.

(Signed) GUILLERMA DE CINTRON,
Postmaster.

(Stamp) Salinas, P. R. Nov. 1, 1902, M. O. B.

Received payment:
(Signed) P. R. PATRON.

46 After I made these orders out I delivered them to the boy; I then made a letter of transmission and detailed the bills; I made a bag and put the silver in the small bag and in the envelope for money orders I put the bills; I put sealing wax on it, and I also put amongst the bills the letter of transmission. I prepared the package on Sunday. My husband was present at the time and acted as a witness to this transaction. I put $479.00 in bills in the envelope. I have a paper with the denominations of the bills stated on it. I myself made this note. (Refreshes her memory from paper, then states) There were seventeen bills of $10.00; twenty-three of $1.00; eleven of $20.00; twelve of $5.00 and three of $2.00. Nothing was put in the envelope of transmission except the bills and the letter. A little bag of silver containing $131.00 went with it.

(On being shown an envelope) When I speak of a money order envelope this is the kind that I refer to, and this little canvass bag, also, is the same kind used by the Government to send silver in and the kind I used that day.

And thereupon, the United States, to further maintain the issues on its part, offered and introduced into evidence a certain canvass bag, measuring about 7 x 9 inches, used for coin in money order department of postal service of Government and marked "For money order business only. U. S. mail. Coin," said bag being marked for identification as Exhibit D for Government.

Also a certain brown, heavy, postal department official envelope, used for transmission of paper money in money order business only, being of form No. 6–1, M. O. B., and marked for identification as Exhibit E for the Government.

After I had put the bills into the envelope and the silver
47 into the sack I sewed the sack there (indicating) and folded it so, and sewed it there on the edge; the bills were in the envelope and it was sealed in three places. I placed the envelope on top of the little pad and then with a string I crossed it and tied it, and then I put sealing wax on it, and on the face of the envelope I wrote: "Postmaster, San Juan." The package was then complete and ready. There was also the certificate on the package—the tag. Yes, this tag envelope is the one that was used for that package.

And thereupon, the United States, to further maintain the issues on its part, introduced in evidence a certain tag envelope in use in the postal system of the Government, labeled "Registered package. Record of transit. (No. 2—tag) number 132" and bearing the following stamps: "Pedro Comas, P. M. Nov. 3, 1902; Rafael Rodriguez, Nov. 3, 1902; received Nov. 4, 1902, Aibonito, Porto Rico; Julio Ramos, P. R., Nov. 4, 1902; J. I. Arias, Nov. 4; M. Brau, Nov. 4."

Marked for identification as Exhibit F for the Government.

After I got the package fixed up that way I put it in the letter box to keep it until the mail left on Monday. There is no fixed hour for the mail leaving my office; sometimes it goes at 8:30 and sometimes at 9 o'clock. Miguel Gomez takes it. He comes from Coamo to Salinas and brings the bag and delivers it to me and I then open it and take out the mail and certificates and register them on this tag and stamp it and write on it. The carrier waits seven minutes for me to do that. On that day, a moment before the carrier came, Mr. Jacobo, the pharmacist, came and asked me to sell him some postoffice orders, and I did so. I gave him the orders and put
48 the notice in the letter-box. I locked the box again and in about a quarter of an hour's time the mail arrived. After having registered the other certificates that came, I took out the correspondence from the box and the package and put it inside the bag. It was put inside the same bag that Gomez, the mail-carrier brought. The registered package came in a small sack and the small sack in the big one. When I put this package in question into the sack it was in the same condition that it was when I put it up. This little sack was tied only. The larger bag is fastened with a padlock; I have a key to it and the other postmasters on the route have keys to it. The mail goes from my office to Santa Ysabel and from there to Coamo. Miguel Gomez leaves Coamo and comes down the River Jueyes and then to Salinas and from there to Santa Ysabel and from Santa Ysabel to Coamo again. He makes the trip every day except Sundays. The mail then goes from Coamo to Aibonito, but Miguel Gomez takes it no further than Coamo. Of the $700.00 besides what I sent in that remittance, I paid a postoffice order to a man by the name of José María Soto

for $119.00. I made the next remittance the next day; it consisted of $50.00 in silver and $87.00 in bills, and the package was done up in the same way as the other one, and I also made out a remittance letter to go with it, and also used the same kind of sack as in the other case for the silver, and I also used another ticket like the other one. Yes, this ticket you now show me is the same ticket I put on it.

And thereupon, the United States, to further maintain the issues on its part, introduced in evidence a certain tag-envelope (No. 9—tag) similar in form to Exhibit F heretofore described, being
49 numbered 185 with dates of transmission from Nov. 4th to Nov. 5th over same route and through same postoffices *and* the other tag-envelope, and marked for identification Exhibit G for Government.

My husband witnessed the making up of this second package, and it was dispatched on the 4th of November, which was Tuesday. I myself personally put this second package into the mail bag, and the same man, Miguel Gomez, was the mail-carrier that day. I received a letter of inquiry from the postmaster at San Juan about these packages. This was on the 5th. I was not accustomed to keep a copy of my letters of remittance in sending these remittances, because I did not know I had to keep one; I had never received any instructions to keep any. I prepared the packages for the remittances in the manner that I did prepare them for the reason that I knew no other way. The packages were closed this way (lengthways) and I used to sew them there (indicating) and I put the sealing wax here (indicating). I put this stamp on this letter (Exhibit A) because it was before me and I wanted to try the stamp to see the date. The stamps and figures were not on it when I received it, but were put there by me.

Cross-examination:

I was appointed acting postmaster when my husband ceased to be postmaster which was in February of 1902. I was appointed postmistress in April, I think, but do not remember exactly. I was acting postmaster for two or three months. In July it was ordered that postal money orders be issued at the Salinas office; be-
50 fore that no postal orders could be bought there. My husband had been postmaster for three years. He was the witness at the time I enclosed this money in the envelope, and he was there always. The postoffice was in my house, which had four rooms, three with the office. My husband in his lifetime stayed in the house as he was a paralytic. He moved about the house. He went into the postoffice part, I used to call him there to act as witness, and sometimes he would come when I was there. José de los Reyes is my father; lately he has been living in Ponce here,

but he has been at my house for about two months; he was living there at the time those money orders were issued. He is alone. His family were at home; the two sisters were absent. Mr. Reyes never went into the postoffice except to see if there were any letters for him. This letter box where I put the package is made of wood; here is the door (indicating) and there on that side was where the box was put. That letter box is locked, but I cannot explain the kind of lock. It had a flat, black key to it and I keep that key. My husband saw me put the money in the envelope; he did not count it but I counted it before him. He saw me seal it up. All that took place in the office. He saw me put the letter in the letter box. That package stayed in the box until Monday morning, when I mailed it. I did not open it before then. Miguel Gomez was present when I put it into the mail bag, and an insular policeman was standing outside the gate. The policeman saw the package but he did not know what was in it. Neither did the mail carrier know what was in it. I did not tell the mail carrier anything about it. There were three $2.00 bills; seventeen $10.00 bills; twenty-three $1.00 bills, eleven $20.00 and twelve of $5.00. I made out the list I have of those bills the day I counted the bills
51 in order to put them on the letter of transmission, and the list was made before I made the remittance. I did not keep any other list besides this. The letter of advice that I sent to San Juan contained a list of these bills with the number and letter of the bills, and that was made in accordance with my instructions. When I first took charge of the office I received printed instructions about the business of the office, and then when I sent something to the capital badly done they would write to me about it. When my office was raised to a money order office, I received a letter of transmission, printed, in order to show me the way I had to do in enumerating the bills. That letter of instructions did not contain directions as to keeping a copy of the remittances. I am certain about that. This envelope I mailed was the same as when I left it. It had the same seals of wax on it. I do not use a stamp when I impress the sealing wax. The way I fastened it was to burn some sealing wax and let it drop. No one else without my knowing it could have removed the wax, after I had sealed the envelope, and opened the envelope and re-sealed it; I had the key in my pocket. No one could have secured possession of that envelope because it was locked up and I had the key. If a person had obtained the package he could have opened it and put the seals back on it without my knowing it; it could have been done. I keep the key to the postoffice box on my key ring and keep the key with me all the time, and at night under my pillow. I always keep it there at night. I am absolutely certain that the key never left my possession. No one in the house at that time had charge of that key except myself. I got the sacks in which to remit money from the capital. I never made a list of the remittances. I made a list, which I sent to the capital, of the remittance

of $479.00. It is not true that I kept a copy of that letter.
52 The remittance I made on Tuesday the 4th of November, ber, was $50.00 in silver and $87.00 in bills—$137.00.

I have seen this letter before which you hand me. I do not know a man by the name of F. Leon, and never saw one by that name. A boy, somewhat tall, brought me these applications for money orders. I know Rafael Rodriguez, one of the defendants; I do not know Euripides Rodriguez. I delivered the money orders to the boy when I issued them and he went away and I never saw him anymore. I do not think they were mailed at my office as the boy went away immediately, but as they throw the letters in the box, and I do not know what they contain, I am not certain. I do not know this man Patron. I sent the advices of the remittance to the postoffice at Coamo on Monday as there is no mail on Sunday. The postmaster at Santa Ysabel has a key to the same mail sack. The small register sack was not locked. It is true that each postmaster goes through the mail sack and examines the condition of the registered packages. When the package is in good condition they sign this card. This card (Exhibit F) is the card I mailed the $473.00 with. Pedro Comas is the postmaster at Santa Ysabel. When he stamped and signed this card it was after the examination of the package. This stamp here is that of Rafael Rodriguez, one of the defendants. This other stamp is that of the Aibonito postoffice; I think the name of the postmaster there is Jordan; Julio Ramos, whose name is stamped here, must be the postmaster at Cayey.

And thereupon, the defendants, Rafael Rodriguez and Euripides Rodriguez, by their attorneys, offered and introduced into evidence a certain letter, marked Exhibit 1 for Defendants, identified by the witness, Guillerma Cintron, as her letter, and which, translated, is in words and figures as follows:

53 EXHIBIT 1 FOR DEFENDANTS.

United States postoffice, Salinas, Guayama county.

STATE OF PORTO RICO, *November 8th*, 1902.

"Fellow-postmaster:

I am very sorry to have to trouble you so many times on which account I pray you to be a little patient this time, as the affair to which I refer is very serious for me, and it may bring on me very serious consequences. I enclose the last communications which I have received from the department at San Juan, in order that you may inform yourself and judge of it, giving me your opinion for my governance in the future. I begin by stating that from the first remittance of funds to San Juan I have always sent the corresponding letter of transmittion and the annexed list.

On the third of November I remitted the sum of $610.00; on the 4th $143.00; on the 6th I sent $206.00. Of the $600.00, $131.00 was silver, and of the $143.00 I am not sure because I did not keep a copy. According to the letter of the postmaster of San Juan he has only received $131.00 of the first and $57.00 of the second in silver. Well, then, up to this moment I have not received the corresponding receipts of the three remittances and not being able to explain to myself the cause of this and wishing to get out of the uncertainty in which I find myself I beg you to tell me something about this.

Respectfully, GUILLERMA CINTRON,
Postmistress."

I did not keep a copy of the remittance of $143.00, nor did I keep a copy of the other remittances. I was sure of the other re-
54 mittances but not about this one. I did not keep a copy of the $610.00 remittance, but I kept a list of the bills. I did not keep a copy of the remittance I made on the 6th of November; from the 21st of July when I began to send remittances I have never kept a copy. In explaining to you why it is I said in this letter I never kept a copy of the remittance of the 4th of November of $143.00, but do not say anything at all about the other two remittances, I suppose I never paid any attention to it. I remitted bills and silver on the 3rd. Also bills and silver on the 6th. I do not remember how much silver or how many bills. I recollect this one of the 4th because they wrote to me from San Juan about it. I do not recollect how much of the remittance of the 4th was in silver and how much in bills. When I said in that letter that it was $143.00 I suppose it was because I did not look at the book.

Q. Which is correct, $137.00 or $143.00?

Ans. It all depends on the addition. I wrote this letter from my office in Salinas. When I remit a package such as has been described I made one card for each remittance. This card serves for both things, both for the sack of silver and the envelope with the paper money in it; they go together.

Q. But this ticket says it shall not be used on sealed matter or on parcels which can be enclosed in registered package envelopes. In view of that why did you attach this to the envelope containing the money?

Ans. From the 27th of July I used to send them in the same way and nothing was said to me. I am certain I always used to put one registered number for the package and the envelope together. At that time we did not have any other envelopes of stiffer paper for registered packages.

Examined by the COURT:

Yes, I put this letter into the letter-box on Sunday after-
55 noon, but I took it out Monday morning in order to put it into the mail bag. It was in the same condition then as

when I put it in the box. If it had been broken open I would have noticed it.

Re-direct:

The postoffice occupies only one room in the house and fronts on the street. We have a little gate or railing there and people come in through that. There is a fence or railing inside and behind that near the door is the letter-box with an opening to the outside and then there is a lid on the box.

Q. Can that box be reached from outside the railing?

Ans. It is somewhat near. The lock is one which is imbedded in the wood.

And thereupon, to further maintain the issues on its part, the United States produced as a witness one JACOBO RAMOS, who, after being duly sworn, testified as follows:

My name is Jacobo Ramos and I live in Salinas. I know Guillerma de Cintron, the postmistress there. About the 1st day of November last I had occasion to go to the postoffice to buy a postoffice order. It was the third of November and on a Monday between eight and nine in the morning. When I got there the postmistress showed me a package which she had already made up and stated that if I had arrived there a little earlier she would have put my money in that package. The mail had not arrived; I do not know when it did arrive as I did not wait for it. The postmistress
56 took the package from the letter-box. It was a package of irregular shape and contained an envelope and a bag. It was tied up and sealed with wax and was about this size (indicating with his hands). After she showed me the package she placed it back in the box.

Cross-examination:

She showed me the package to let me know that it was already made up and to indicate to me that I should have come earlier to get the postoffice orders. She did not open the package. I do not know what was in the envelope. In the bag it seemed there was silver as the form of the dollars could be seen. I do not know how much money was in the sack. The envelope was like that one (indicating Exhibit E). It was tightly bound to the package and I could not appreciate the thickness. It was sealed with wax and was pretty think; I felt no interest in it and did not notice it particularly.

And thereupon, the United States, to further maintain the issues on its part, introduced as a witness one CARLOS LLANGER, who, being duly sworn, testified as follows:

My name is Carlos Llangér; I live in Salinas and have now lived there three months. I know Doña Guillerma de Cintron, the post-

mistress. I remember an occasion about the first days of November when I was in the postoffice. I was there talking with the husband of the postmistress and I saw her sewing a sack. That was on the 4th of November, election day. I did not see what was in the package, nor did I see what she did with it; I saw only that she was sewing a sack but I do not know what was in it. Certainly it had something in it; it was about this size (indicating a
57 space of about 6 x 6 inches). I remained there until she had completed the package and put it on the table. It was a sack like this one (indicating Exhibit D). I think that is about the size of it. I did not see anything besides the sack and the package. I did not notice what she did with the package after that. I was waiting there for some letters. It was about five or ten minutes before the mail.

Cross-examination:

The sack was folded when I got to the parlor and I only saw that she was sewing it. She was in the office and I was in the parlor talking with her husband and some friends there. I could see her in the other room. The sack was already folded and she was sewing it on the edge. It was full but I do not know what it contained. When she got through with it she put it on the table and a few moments afterward I got my mail and went home. I do not know whether she mailed it.

And thereupon, the United States, to further maintain the issues on its part introduced as a witness one PEDRO COMAS, who being duly sworn, testified as follows:

My name is Pedro Comas; I am postmaster at Santa Ysabel which position I have held for three full years. I am not sure about the distance from Santa Ysabel to Salinas, but it takes one and a quarter hours to make it on horseback. It is about a couple of hours from Santa Ysabel to Coamo on horseback.

I know Guillerma Cintron, the postmistress at Salinas. Mail comes from Salinas to my office at Santa Ysabel on horse-
58 back. There were two mail carriers, but I think that on the first of November last Miguel Gomez was the mail carrier. When the mail comes from Salinas to my office I handle the registered packages in this way: The certificates come within the pouch; they come in a small sack; when the big pouch arrives I empty it on the table, and then I take away the little sacks and put them on one side; I separate all the mail addressed to Santa Ysabel and then I put back into the big pouch that which is in transit; then I open the sack in which the registered matter comes; I look at the ticket that comes on top of the registered matter; if the number of registered packages corresponds with the number on the ticket then I put aside those for Santa Ysabel, if any come directed to Santa Ysabel; and as to those in transit I put a note on them on which is

my name and surname, for which I use a rubber stamp, and I also put there the day, month and year, which is also by another rubber stamp. This (showing Exhibit F) is a sample of that card. Here is my name here. When this is done I draw up a new ticket stating all the registered matter that is to go in transit. When this is done it only remains to put into the little bag all the registered mail; I then call the letter carrier and ask him to witness the number of certificates I put inside, 1, 2, 3, or 4 or whatever the number may be; then I tie up the little bag and throw it into the big sack; then the letter carrier signs there an entry in the little registry book which I used to keep before but do not keep now. I then close the big sack with the pad-lock which locks itself and deliver it to the carrier who takes it away. No one but myself in my office has the key to that pouch. From the time that the carrier arrives until he leaves it takes me from six to ten minutes to arrange that
59 mail, it is never over ten minutes. The postoffice is all in one small square room and this room is divided by a little railing which it is not permitted anybody to go through. Sometimes there are some people there when the mail arrives; at other times nobody.

I remember that on the 3rd of November registers came from Salinas. There were three of them. Amongst those three there was one in the shape of a package and the others were envelopes. I will describe the package: This package was a package made by a small sack; this sack was full of mail money because in putting it on the table it gave out a metallic sound. Upon that little sack there was an envelope, an official envelope like those used in the postoffices, which showed that there was something inside of it also; this envelope was tied up with a string and the string had sealing wax on one side of them. The envelope was put on top of the bag and the string was tied across it. It was this kind of an envelope, Exhibit E. The envelope was folded up and in ink here it was addressed to "San Juan, Porto Rico." This Exhibit F. was the same ticket that was on it. That package went out of my office in the same condition in which I received it. I am very positive about that. As it did not belong to my office all I could do was to fulfill my duty to it and let it go on to its destination. I am perfectly sure that I locked the mail pouch that day.

On the day following, the 4th, some registers came from Salinas, There was one package amongst those registers. That package left my office in exactly the same condition it was when I opened the bag. I found the bag locked when it came to my office that day; if it had not been so I would have reported the matter to the department. I think, after that occasion, that this matter was
60 first called to my attention about the 7th or 8th when the inspector, Mr. McLeod, was there. Coamo is the next office after mine where the mail bag is opened. The postoffice is a distributing office for the routes to San Juan and Ponce. This is the ticket, the one of the 4th of November, that was attached to that bag

or package. With that direction, being directed to San Juan, it would go to Aibonito from Coamo.

Cross-examination:

I have been postmaster at Santa Ysabel for three full years. Santa Ysabel is not a money order office. We send registered packages from there. The registered packages go into envelopes, the ones provided by the department. When the registered matter can go into an envelope it is put in one of the regular envelopes; but when it is a package that cannot go into an envelope then it is made into a package and one of these tickets are used. Whenever Salinas sends registered mail and it can go in envelopes it comes in envelopes like these here. If the packages when received in my office are not in good condition I am supposed to note on the ticket in what condition they are received. The packages that I have been speaking of, that came from Salinas on the 3rd and 4th of November last, arrived in my office in good condition. If the packages or envelopes come in good condition I do not have to state on them that they come in good condition, but if they come in bad condition then I note that on the ticket. In addition to that envelope and these tickets I send back to the postmaster at Salinas another card showing that the registered packages have reached my office. From Salinas, for instance, there come the certificates accompanied by a card like this one (Exhibit H); on this ticket there is the number of each
61 certificate and the name of the office where it comes from, the date and the name of the office where it goes. This ticket remains in my office until the next mail. After the mail has been sent away then from this ticket I make an entry in the registry of certificates or registered matter of transit, and the next day the ticket is mailed with my name and surname and here in this corner I put the letters and the numbers of the certificates that come. I signed one of these cards and returned it. That card showed that on the 3rd of November I had received 3 packages. And another card showed that on the 4th the day following, I had received two packages. That is to say, on the 3rd of November there were four packages three of which were in transit and one that stopped at my office. The numbers of the packages that came on the 3rd of November corresponded to the address of the office at San Juan. All the three packages that passed in transit through Santa Ysabel to San Juan from Salinas were addressed to the postmaster at San Juan. As to the packages sent up from Salinas on the 4th of November I do not remember whether or not that they were addressed to the postmaster at San Juan, but it must be stated in some of the documents there. Yes, I do remember that one was so addressed, but I am not sure as to the others.

Yes, of course, I sent all those packages that were in transit out of my office in the same condition in which they were received. I

received back from the Coamo postoffice a card like this Exhibit H. I have that of the 3rd here in my pocket and that of the 4th must be in my office. (Witness exhibits the card.) This ticket must have been received by the next mail; the stamp of the office there will tell.

62 And thereupon, the defendants to maintain the issues upon their part offer and introduce into evidence a certain registered package receipt card, identical with Exhibits H. & I for the Government, in form, and with the following in writing and stamps upon it:

(On address side) Registered Nov. 3, 1902. Santa Isabel, P. R. Registered Nov. 5, 1902, Coamo, P. R. P. M. at Santa Ysabel, P. R. (On receipt side) R. R. R. R. R. (No.) 120, 121, 181, 182, 183, (postmarked at) Santa Ysabel, Santa Ysabel, Salinas, Salinas, Salinas. (Date of postmark) Nov. 3rd, 1902. (Name of postoffice addressed) San Juan, Lajas, San Juan, San Juan, San Juan. (Signature of postmaster) Rafael Rodriguez, P. M. (Total of pcks.) Five."

Marked Exhibit 2 for Defendants.

On the 7th or 8th, I am not sure which day it was, when the letter-carrier arrived that day when I was dispatching the mail he told me that there had arrived at Coamo an inspector, and that when he had left Salinas he had left him there, and that he believed the inspector was coming to my office. That was the first time my attention was called to this matter, and that same day the inspector came to my office. Mr. McLeod was the inspector and he was the one who investigated this matter.

Re-direct:

I remember that a man by the name of Julio Santiago was in my office on the 3rd of November when I received and handled the registered packages that date I think there was some one else, also, but do not remember who. I do not remember whether on the 4th people were waiting for their mail or not when the mail arrived. Of course the people saw me when I examined the registered packages, because all my operations are in sight of the people there.

63 From my writing table to where the people are it must be a yard, more or less. These two gentlemen that I have mentioned were standing within a yard of where I was distributing the mail. The registered packages were not on that table but on another table, and I empty the bag containing the mail on the other table. When I lay the registered packages aside temporarily I put them on a chair which is by the side of the table. These people must have seen me when I emptied the bag and emptied the little sack out of it. They saw me when I opened the little bag where the registered mail comes. They were there present and undoubtedly must have seen me when I put those registered packages back into the sack.

This name here which you hand me reads "F. Leon." I do not know the signature. I do not know any man by the name of F. Leon living in Santa Ysabel. I never heard of anybody of that name there. I have lived there sixteen years. I do not know any man by the name of P. R. Patron. This letter seems to be an F but it may be a T. It looks like a T here on this other. I do not know anybody by the name of T. Leon either.

Recross-examination:

It is one and a quarter hours from Santa Ysabel to Salinas, and to Coamo it is two hours by horseback. I do not remember whether the mail came in on time on the 3rd of November or not, as my office has no fixed time for its arrival it may arrive later or earlier. I think, after having lived sixteen years in the Santa Ysabel district, there are very few people there that I do not know.

And thereupon, to further maintain the issues on its part
64 the United States introduced as a witness one JULIO SANTIAGO, who, being duly sworn, testified as follows:

My name is Julio Santiago and I live in Santa Ysabel where I have lived for the last twenty-nine years. I generally work there on an estate, and if not doing that I shave, and if not that then I carry the mail for some gentlemen in Santa Ysabel. I have worked at various places during the last ten years. I remember being at the postoffice the 3rd of November last, the day before the elections. I was there about ten o'clock and at the time the mail arrived. I was there when the mail-carrier arrived and when he went away. When the mail arrived I had alighted from my horse and was within the room of the postoffice where the mail is handled. I was there when the mail was being distributed by Pedro Comas, the postmaster. I do not remember seeing any other people there. The carrier was there not over ten minutes before he left again. Pedro Comas, the postmaster, handled the mail right before my sight. My acquaintance is pretty wide in that community and I do not know a man by the name of Leon there.

Cross-examination:

I said that I carry the mail for several gentlemen who employed me for that purpose; I carry it from the postoffice to their houses and they pay me for doing it. Some of them pay me 25 cents and others 30 and 40 and 50 and 60 cents a month for doing this. I also shave. I go to the postoffice often; every day; I will tell you how that postoffice is arranged. It is just like a room but is very small and in front there is a railing, and on the inside there are two small tables where the mail is handled, and from the
65 outside you can see everything done inside. It is about half a yard from this railing to the table. When the postmaster

got the mail on the 3rd of November he took the bag and the key he had and unlocked the padlock and opened it and put all the mail on the table. He began to put the newspapers and some packages on one side, and then inside the large mail bag which came was a little bag which he put on one side, and then began to throw into the large bag the packages which did not belong to Santa Ysabel. I saw him put back into the bag the packages and letters which were going to another town. I do not know where that mail was going that he put into the bag. I know this because I saw that the packages for Santa Ysabel were put on one side and they were marked "Santa Ysabel." Those he put back into the sack were not for Santa Ysabel. The big sack was put on the side table and the little sack was put right in front of it.

And thereupon, to further maintain the issues on its part, the United States introduced as a witness one MIGUEL GOMEZ, who, after being duly sworn, testified as follows:

My name is Miguel Gomez; I live in Coamo. I am a man engaged in buying and selling but now I am in the postoffice business. My duty is to get there in the morning and receive the mail from the postmaster and then take it to Salinas and from Salinas when I am dispatched I take it to Santa Ysabel and from Santa Ysabel again to Coamo. I cannot tell the exact hour when I start from Coamo because I have to await the arrival of the mail from San Juan. Just as soon as the mail arrives from San Juan and is dispatched in the office
66 the postmaster sends me out with it. The usual hour is from seven to eight o'clock. I have orders to go from Coamo to Salinas in two hours but that depends on the horse; it may be a good horse or a bad one; and then again it depends on the state of the road. With a good road and a good horse I get there in two hours. From Salinas to Santa Ysabel with good road and a good horse I make it in two hours also, but that depends on the animal and the size of the pouch. From Santa Ysabel back to Coamo it takes the same, two hours. The distance between these places is about the same, except that from Coamo to Salinas there is no road, only a trail. The road from Santa Ysabel to Coamo is the best. I have been carrying the mail over that route since the 18th of August and up to this time. I remember the day of the elections. I was carrying the mail that day and the day before. The day before t he elections I arrived at the usual time at Salinas. I cannot tell exactly how long it took the postmistress to prepare the mail for me but it must have been from ten to twelve minutes. When she was preparing the mail I was in front of the door. I suppose on election day, the 4th, I must have arrived there at about eight o'clock in the morning as it was a very rainy day. I arrived at Santa Ysabel about ten or ten-thirty on those two days. The road from Salinas to Santa Ysabel in rainy weather is almost impassable. I got back to Coamo at one or two o'clock in the afternoon. I cannot tell you at what time the mail leaves from Coamo for San Juan.

because when I get there the postmaster opens the pouches and examines them and if everything is all right he tells me I can go, so I go. I do not know the hour the mail usually passes through Coamo from Ponce for the capital. The day before election and on election day the pouch which I carried from Salinas to
67 Santa Ysabel and from there to Coamo was not opened or troubled by anybody or interfered with by anybody on the road, except, of course, the postmasters. I had no key to the sack; the postmasters only have them.

Cross-examination:

The name of the postmaster at Santa Ysabel is Don Pedro Comas. I do not remember the time when I got to Santa Ysabel on the 3rd of November last but it must have been about twelve o'clock; it all depends on the time I left Coamo. On the 3rd the sun was shining but the road was very bad as it had been raining. As I do not know anybody in Santa Ysabel I do not know who was in the post-office when I got there on the 3rd. There is almost always some one in there. Yes, the postmaster was there. I know Julio Santiago, if it is the letter carrier you mean. I do not know whether he was there or not; he might have been in the parlor. I notice that Pedro Comas, the postmaster, when he gets the registered mail puts them on a table and puts some little stamps on them, and there is a small bag where the certificates go and he puts them in that and ties them up and puts it into the big sack again. I used to help count those packages when he put them back into the big bag; they used to call me to notice how they put those things inside the big bag. They used to be over there and they used to say: "Now look out" and they would begin to count and call out the numbers and I would look at what was being put in. They generally call the mail carrier and count it before him. They counted that mail every day I went there. I am the regular letter carrier for that route but whilst I am here at court somebody else is doing it.

Re-direct:

68 Yes, I noticed several of these packages that they counted before me on the 3rd of November. I did not notice whether one or more was a large package, but I saw they were packages.

And thereupon, the United States, to further maintain the issues on its part, introduced as a witness one NICOLAS JORDÁN, who, being first duly sworn, testified as follows:

My name is Nicolas Jordán; I have lived for twenty-two months, more or less, in Aibonito, and live there now. Before that I lived in Guayanilla. My occupation is that of postmaster at Aibonito, which position I have held for twenty months, more or less. The mail coming from Ponce or Coamo arrives at Aibonito at about 12.30

to 1 o'clock at night. My office is both a money order and registered package office. Coamo is the last place where the mail is made up before it reaches my office. I believe the mail leaves Coamo at about 9 or 10 o'clock at night. When I receive the mail I handle each registered package. I sent back tickets, as receipts for them. When I say tickets I mean like this one (Exhibit H). Registered matter put into the postoffice in Salinas and directed to San Juan or Guayama have to pass through my office. I recognize these cards which you hand me and that is my signature on the bottom there. I recognize these two tickets which you hand me (Exhibits F & G), and that is the stamp of the Aibonito office on them. In accordance with my receipt there on the 4th and 5th of November last to numbers 182 and 185 I remember having handled the packages to which these numbers refer. Packages containing money and also larger packages come with tickets like these. I remember that when these packages passed through my office they consisted of one
69 part only. That was a bundle. It did not have an envelope like this one, Exhibit E.

Cross-examination:

When I stamped that receipt on there it meant that the package arrived at my office in good condition. That is the same as to this other one. This is my receipt here on this yellow card. According to this card there were three packages, registered, from Salinas to San Juan on that day. All of those three went through my hands in good condition. These packages were addressed to the postmaster at San Juan, as I remember. On the 4th there were two packages from Salinas and both addressed to the postoffice at San Juan. So that the three packages on the 3rd and the two packages on the 5th were all addressed to the postmaster at San Juan. They went there in good condition so far as the outside appearance was concerned. I first heard about this case from the inspector. I said that the only package I saw was a bundle, or bag, with money. It was in a bag, this one here (Exhibit D). It appeared in this form (illustrating) tied with a string and with a tag on it. It was tied in this way (illustrating with the bag). I did not notice whether it was sewed. It was not tied this way (around the neck). The bag was not very big. I could not tell about how much money it had in it. I am certain it had no envelope like this one (Exhibit E)—on it. I have envelopes like that in my office. Yes, I have been postmaster at Aibonito for about twenty-two months. During that time when I make small remittances of bills that do not take much room I use this class of envelopes for them. I have seen other packages coming through my office from the Salinas office before. The regis-
70 tered letters were sent out in letters like this one. I said that I first heard of this case about three months ago when the Inspector McLeod called there. Yes, I am under indictment in this court in connection with this case.

By the COURT:

Q. This package consisting of that bag—did you say it was in good condition?

Ans. With the ticket it went to Cayey.

Q. Whether there was anything else sent from Salinas with that package—any other paper or package or part of a package, you do not know?

Ans. I told the first time that I could not tell exactly, but now just calling to remembrance I remember now it did not have any envelope—remembering and calling to my mind now the package.

Q. What you mean by saying that the package was in good condition was that the package consisting of the bag was in good condition?

Ans. That the bag alone was.

Re-cross-examination:

Q. Was it before or since your indictment that you recollect that that envelope was not on that sack?

Ans. Yes; after; but thinking about it a good deal I remember that the bag did come there without the envelope.

Re-direct:

Q. Please state whether Mr. McLeod, the postoffice inspector, at any time has threatened to have you removed from office if you did not remember more particularly about that package?

Ans. No, sir; I was not threatened.

71 And thereupon, the United States to further maintain the issues on its part introduced as a witness one JOSEPH C. SPEER, JR., who, being duly sworn, testified as follows:

My name is Jos. C. Speer, Jr. I live in San Juan, Porto Rico. I am the clerk in charge of the registry division of the San Juan postoffice. I have been employed in the San Juan postoffice two years this June. The mail generally gets in from Ponce, Coamo and Aibonito at 9:30 in the morning. I was on duty on the mornings of November 4th, 5th and 6th and handled the registered matter coming in those days. I remember the packages which correspond to these two tickets which you hand me, marked Exhibits F. & G. These packages were opened in the presence of Mr. Commons and Mr. Lopez and Mr. Le Hardy of the money order department. These gentlemen were all employés of the office. Package number 182 arrived first. That package was a sack of silver, a bag tied at the top and sealed with wax, containing nothing but the tag. There was no letter of remittance or anything else to identify it except this tag. It was a regular money order remittance bag like this one here (Exhibit D) but larger than this one, a little longer. As to package number 185 that was, I think, a smaller one about

the size of this one (pointing to Exhib. D) tied in the same way around the rip and sealed with wax and bearing nothing but a R. P. My duty in connection with these remittances is to check them off and if they are wrong to report them. These remittances are delivered to Mr. Commons and to Mr. Le Hardy, the money order clerks. In this instance these packages were delivered to Mr. Commons. No, I did not change the condition of these packages in any way from the time I received them up to the time I delivered
72 them to Mr. Commons. He saw me cut the tags off and deliver them right there. Before I delivered it to him I cut the string off and he was there and he asked where it was from and I looked at the tag and told him. Yes, my attention had been called to their unusual condition because he had received no remittance letter and had reported the matter to the inspector. These packages do not come in a bag; they come in an outer pouch from the dispatching division and they turn them over to me. I then open them. There was no one else called in but Mr. Letherman, the inspector.

Cross-examination:

I think there were three registered packages that came from Salinas arriving in San Juan on the 4th. Some arrived on the 4th and some on the 5th. These packages were not addressed to the postmaster at San Juan; one was addressed to a man by the name of Lopez, I think, and I could not say as to the others. Some of them were addressed to the postmaster at San Juan. I think the sack was the only package received in the postoffice on the 4th addressed to the postmaster. This sack was opened by Mr. Commons and he called my attention to the fact that it had nothing but the money in it; no other letter. No, not to my knowledge did the San Juan office receive from the postmaster at Salinas, either at that time or subsequently any list of bills by which she remitted to that office the sum of $479.00; I have no knowledge of that. On the 4th of November the postmaster at San Juan did not receive from Salinas any registered envelope of this kind containing any registered matter at all. Yes, I said that the sack received on the 4th was like this one (D) but a little larger. I do not know how many sizes these sacks come in. To the best of my recollection that sack that we received was tied like this (around
73 the neck) with a string and with wax over the knot. That string was perfectly secure. It was apparently in the same condition that it left the Salinas office. The sack that was received on the 5th was in the same condition and tied in the same way, with a string there around the neck and with a tag. In the envelope was a white bill card and a gray card. I do not know anything about hos or when the receipts are sent to the postmasters for these remittances. That is done by the money order department. These packages when they come in are first handed to me and then to Mr.

Commons. There is a card which we sign and which is a receipt for so many packages sent. I then turn the packages over to Mr. Commons and he acknowledges the receipt of the same to the postmaster. A letter of remittance should always come with every remittance. There was none with this one. When paper money is sent they put it in a money order remittance. The money is put in an envelope like this one and the whole thing put in a larger envelope and then registered. No, it is not seldom that a postmaster runs out of these envelopes. I do not know what they would do if they did run out of them. Remittances of silver very seldom came with these envelopes folded around them.

And thereupon, the United States, to further maintain the issues on its part, introduced in evidence two cards known as registered package receipts, form 1556, marked for identification Exhibit H for Government and Exhibit I for Government, which are in words and figures as follows to-wit:

EXHIBIT H.

Registered Package Receipt.

Page —. 1556.

Post Office Department
Official business.
A penalty of $300 is fixed by law for using this card for other than official business.

(Stamp of receiving office)
Aibonito, Nov. 4, 1902.
(Date of return.)

74. Receipt on other side and return this card without cover to P. M. at Coamo, State of Porto Rico.

Stamp of dispatching office
(Registered, Nov. 3, 1902
Coamo, P. R.)
and date of dispatch.

(On other side.)

Received from postmaster, whose name appears on the other side, the registered packages described as follows:

(Description R. or S.) Write "R" for ordinary packages, "S" for postage stamps, stamped envelopes or postal cards.

	No. of package.	Postmarked at	Date p'stm'rk.	Name of P. O. addressed.
R	120	Sta. Ysabel	3	San Juan.
"	131	Salinas	"	"
"	182	"	"	"
"	183	"	"	"
"	182	Coamo	"	Scranton.
"	44	J. Diaz	"	New York.
"	45	"	"	San Juan.

Write signature; do not stamp.
Avoid blanks between entries and after last entry; (see sec. 1060, regulations of 1893.)

(Signed) NICOLAS JORDAN,
P. R., or Postal Clerk.

Seven.
Signed will write here in words total of packages.

(EXHIBIT I.)

(Is identical in form with Exhibit H, but contains the following written in words and figures.)

(On address side.)

Stamp of dispatching office (Registered, Nov. 4, 1902, Coamo, P. R.) and date of dispatch.

(Stamp of receiving office and date of return Aibonito, Nov. 5, 12 p. m. Porto Rico.)

75

(On reverse side.)

R	184	Salinas	4	San Juan
"	185	"	"	"
E	678–102	Ponce	"	"
R	964	Guanica	"	Rio Piedras
R	19	Peñuelas	"	Patillas
V	950–147	Ponce	"	New York
V	913–278	"	"	"

Seven (pkgs.)

(Signed) NICOLAS JORDAN, *P. M.*

And thereupon, to further maintain the issues on its part, the United States, introduced as a witness one E. B. COMMONS, who, being duly sworn, testified as follows:

My name is E. B. Commons; I live in San Juan, Porto Rico; I am in charge of the money order department of the post-office there and have been in charge of that department for about four years. The San Juan office is the depositary for all money order offices on the island. They are required to forward and deposit all their funds in the San Juan office. All these remittances pass through my hands. Yes, I do remember some unusual remittances that reached my office on the 4th or 5th of November last. Those tags you have there were on two parcels of silver, reaching my office on the 4th or 5th of November. Yes, one each day. I was in the registry department waiting to receive my funds in the presence of witnesses as required by the rules and regulations, and after these tags

were cut off I had no way of identifying the sacks and where they came from. There should have been an envelope or letter of remittance containing these parcels, but there were none. These tags, after they are cut off, are kept in the registry depart-
76 ment. I made inquiry and asked where these parcels were from and the registry clerk took up the tags and the gray card which was inside and said they were from Salinas. That was shown by the cards themselves. The first package, the one received on the 4th, was the larger of the two. This package was in one of the regulation money order sacks. A sack more or less like this one (Exhibit D). The sack was a little older than this one and I have turned it in. It was done up this way, around the neck, with the string tied around here (indicating) and sealing wax on it. It contained $131.00 in silver. Yes, my recollection is that the other sack was done up in the same way. The second sack contained $57.00 in silver, and according to the rules and regulations I had to make a report at once in regard to the shortage. Because of the shortage and the fact there was no remittance letter they immediately started an investigation. Yes, I saw the string around it in that way and it had wax on it. There was no stamp or seal on it in any way whatever. Yes, I have received other remittances of postoffice money order funds from the Salinas postoffice. In the other former remittances made by the postmistress of Salinas of funds she did the package up in the regular way by putting the envelope containing any currency or bills, together with the remittance letter, in one of the official envelopes, and tying that upon the sack of coin, if she was sending coin also. This postmistress at Salinas also did something peculiar that none of the other postmasters did. She used to sew her sacks up, and then sealing them. That was her custom. Before these two sacks which you have just mentioned were received by me from Salinas I never received any sack of coin from that postoffice that was fastened or tied in the manner I have described these two sacks as being tied. There was one time, previous
77 to the 1st of November, that I received a sack of silver from the Salinas postoffice. I received the official remittance letter together with the amount of currency—between $70.00 and $80.00. It came loose in the ordinary mail and the envelope was open. The two packages came separate. The envelope containing the bills was open. That is the only time. Lots of times, in making a remittance of silver only, they cannot get the silver in one of those envelopes and have to use a bag with a tag on it. When I received these sacks I reported their condition and then called for additional witnesses, who were my own assistant, Mr. Letherman the inspector, and Mr. Speer and one of his assistants.

Cross-examination:

Yes, I said that when a postmaster remits silver, unless it is a small amount, it is put in one of these bags. When he remits bills

they are put in an official envelope and described in the remittance letter, and the instructions are to put bills in the regular envelope and forward them with a remittance letter. That remittance letter is registered with the remittance and sent with it. If there is any silver it is put in a bag. That is the regular way of remitting it. Yes, I have been here four years. No, I never stated that I had never received from Salinas a sack of coin tied at the top like this one was. I said I had never before received a money order remittance without the letter accompanying it and describing it. I had no way of telling how much it was, except by counting it. Yes, I have received sacks tied at the top but always with a letter accompanying them. Yes, the Salinas postmistress sometimes folds her sacks up and stitches them at
the top; since this case has come up she has not done it, but
78 prior to this she did. She used to tie it and then sew the whole thing up. The top was stitched across the mouth and then the whole thing was tied up in this way (around the neck); it was not open. I had no way of identifying that sack as to where it was from. I am speaking now of the one I received on the 4th of November or 5th. It was tied around the top with a string with wax on it. Yes, it was stitched at the top. Usually postmasters send their letters of advice accompanying the remittance and in the same envelope with the remittance. And if they send any coin they put it in a sack. But if they had only a five-dollar gold piece, for instance, they would put it in a small piece of paper and enclose it in the envelope with the letter of remittance, but when they have a large amount of coin they put it in a sack. Yes, I have spoken of a remittance from the Salinas postoffice before these two remittances in which the envelope came in the ordinary mail sack and not in the registered mail, and the envelope, containing money, was open. That was about five months ago, and during the incumbency of the present postmistress. The remittance was in tact. Yes, I knew this remittance was irregular because it had not remittance letter. This thing happened in the morning; I reported the matter to the postmaster and he sends a telegram together with other communications from the inspector and we receive back a communication from the postmistress at Salinas in regard to these two remittances. What I have stated applies to both of the remittances.

Re-direct:

My recollection is that the amount of money in the other remit-
tance about which I spoke as having received about five months ago, was $70.00 or $80.00 in bills, and the same letter of re-
79 mittance described the denomination and numbers and letters of the bills. They were all $1.00 bills, I think.

And thereupon, the United States, to further maintain the issue on its part, introduced as a witness one PAUL BOISENEAU, JR., who, being duly sworn, testified as follows:

My name is Paul Boiseneau, Jr. I live in San Juan. I am in the Railway Mail Service of the United States, detailed in Porto Rico. I have been in that position since May 1900; I came to the island in August 1898. Yes, I speak Spanish with considerable facility. Yes, I did make a trip in company with Mr. Letherman, the inspector in charge, in reference to this case. We left San Juan on December 9th and went to Guayama, stopped over night and got to Salinas on the evening of the 10th. We made some investigations in Salinas and from there went to Santa Ysabel and from there to Coamo. During this time I was acting as interpreter for Mr. Letherman. While Mr. Letherman and I were at Coamo we had a conversation with one of the defendants, Rafael Rodriguez, in regard to this matter. He was asked if he had cashed these seven money orders to P. R. Patron, and he said he had. He was asked if he knew who this Patron was, and he said no. He was asked if he had made any attempt to find out who Patron was, and he said he had since the development of the case of course, and that he had made inquiries all over town. He was asked to describe the appearance of Patron, and he claimed that Patron was a man about twenty years of age, about Rodriguez' own color, wore dark clothes, black felt hat, etc., and had the appearance of being either a gambler, a peddler or a drunkard. We asked him if that was all that he could say and he said yes, and produced from his pocket
80 an old envelope with "P. R. Patron" on it. He was asked if he could tell the postmark on that envelope and he said no, that he did not know any more about the man than we did. He was asked that if he was in business for himself, for instance, and a perfect stranger would come in and present a check for $700.00 would he pay it without having any more identification than an old envelope which may have been picked up out of some waste basket, and he merely shook his head in a negative way. Then he was asked about certain other transactions in his money order business. This conversation took place in the postoffice in Coamo. The three of us only were present, but I think that one of his brothers came in for a little while but went out again. After he had stated that he had made inquiries all over the town for this Patron and at the principal business houses, he was asked if he could mention a few of the places, and asked directly if he had made inquiries at the hotels. He stated that he had made inquiries at the business house of Pico Hermanos and I went there, and—(rest of answer stricken out as incompetent). I had no further conversation with the defendant as to the results of these inquiries. There was no further conversation about that, but after continuing the investigation in the office we showed him the handwriting on the application and on the money orders and told him we thought he had signed those orders, and he did not say anything, neither denying or affirming it. While at

Santa Ysabel we made inquiry as to the identity of F. Leon, but that inquiry was left to another inspector to finish. When we showed Rodriguez the handwriting on the applications, we compared them with his own handwriting on various records in his office, such as money order books, in his presence.

81 Cross-examination:

Yes, these money orders that I have spoken of as having been paid by the Coamo office were drawn in the regular form. Yes, and regularly paid, as the postmaster at Coamo said he had paid them himself. Yes, so far as I know the orders were regular in every particular; they had every appearance of being so, and when I looked at them I did not make a close examination of them as to the signatures. There was no doubt but what the money was paid out. He said so himself.

And thereupon, to further maintain the issues on its part, the United States introduced as a witness one DONALD E. MCLEOD, who, upon being duly sworn testified as follows:

My name is Donald E. McLeod; I live in San Juan; I hold the position of postoffice inspector. I have held this position about four or five months. Before that I was chief clerk in the office of the postoffice inspector at San Juan. I held that position about a year and a half. Mr. Alfred A. Smith preceded me in the position of traveling inspector. I think he resigned on the 12th of June. I went out on the road as inspector on the 16th of October. Between those dates no one was performing the ordinary duties that Mr. Smith performed. Yes, about the 4th or 5th of November a report was made to me of irregularities in the remittances of money from the Salinas office. I then went to Salinas to investigate the matter. I am not sure about the time but think it was the 7th or 8th of November. I also went to Santa Ysabel and the surrounding country. In that investigation I made general inquiry
82 as to the identity of a person named F. Leon. I inquired of everybody in Salinas of any prominence to see if I could locate such a party, and I telephoned to the Aguirre sugar estate about it. I made general inquiries all over the Aguirre sugar estate country. I did not ascertain the whereabouts of any such person. I also made general inquiries as to the identity of the party, P. R. Patron; I did not ascertain the whereabouts of any such person. After I got to Coamo I had a conversation with Rafael Rodriguez, one of the defendants, in regard to this matter. I had several conversations with him. I asked him about the two registers sent by the postmaster at Salinas, and he said that he did not know anything of them. I called his attention to the fact that these registers must have lain in his office from two in the afternoon until eleven at night on his desk or in his power, and he said he could not remember anything about them. I called his attention to the fact

the way the remittances had been made up and to the peculiar way he had made them and he said he could not remember anything about that. I went to Salinas first and then to Santa Ysabel and then to Coamo and this conversation was on the same night when I arrived at Coamo. I asked him then about the seven money orders, and to whom he had paid them, and he said to a man by the name of P. R. Patron. I asked him if he knew Patron, and he said yes, he had seen him before. I asked him if he knew Patron well enough to pay him seven hundred dollars; he said he could not tell me where Patron lived. I asked him why he had paid the amount of the orders to a man he did not know, and he said the man wanted to collect the money, and he asked him to be identified, and he said that the man took an envelope out of his pocket addressed to P. R. Patron, and on that evidence he paid the orders. I asked him if he did not know that the
83 regulations did not allow a postmaster to pay money to a man he did not know. He said he knew it but could not explain except that he did pay them to them man on the evidence of the envelope. I asked him if he could assist me in any way in finding the man and he said no, that he could not. I tried throughout the town to find the man and went to all the merchants and made inquiries in regard to this P. R. Patron, but nobody knew him. I asked Rafael if he knew this F. Leon, and he said he did not, and had never heard of him. I asked him if he knew of any person doing business around there by that name and he decided finally that he had delivered letters to a man by the name of Leon. He said there was a man by the name of Leon who lived up at the barrio "Pedro Garcia." He told me that that night, and he said also that he thought Patron lived there also, and they were both business men, and I asked him to go up there with me to find them and he said he had a sore finger and had never ridden horseback. I insisted on his going and he finally asked his father and told me he would go then in the morning, and I told him to have his horse ready, and when I came out for breakfast there was a horse there for me but none for him. I asked him if he was not going, and he said no, that his finger was so sore he would not go. I went alone up to "Pedro Garcia" but could find no man by the name of Patron, but found one man by the name of Leon, who was a coffee planter. His name was Francisco Leon. That barrio of Pedro Garcia is not towards Santa Ysabel but in the other direction, straight over the mountains. Going from Coamo to Aibonito "Pedro Garcia" would be on the left hand side and over the mountains going towards the interior of the island. When I got back to Coamo I had another talk with Rafael and he gave me a further description of this man Patron. He said Patron was a mulat-o,
84 a man of medium height, wore a collar and neck tie and was dressed in dark clothes. Rafael Rodriguez at that time was postmaster at Coamo and his brother Euripides was assistant. I do not know how long Euripides had been assistant postmaster, but for

some months. Rafael up to that time had the main charge of the office. Yes, he did the most of the writing. Yes, I examined the books of the postmaster there at that time. Yes, these books you now hand me are the books kept by Rafael Rodriguez, the postmaster at Coamo. You see I have put my initials on them. Yes, these books are kept in his handwriting. I think they are all in his handwriting.

And thereupon, the United States, to further maintain the issues on its part offered in evidence the two books kept by the postmaster at Coamo, Rafael Rodriguez, for the purpose of showing the alleged identity of his handwriting with that of the applications marked B and BB, and for the purpose of showing in the money order cash book the entries from the 1st to the 7th of November, 1902, showing the amount of money he had received and had on hand during that period.

To which offer defendants, by their counsel, objected on the ground that the proposed evidence was incompetent, irrelevant and immaterial, and upon the court allowing the same to be admitted in evidence the defendants, by their counsel, excepted to said ruling.

(An extract of the entries made in said cash book between the dates November 1st, 1902, to and including November 7th, 1902, is as follows:)

Statement No. 11.

Cash book.

Rafael Rodriguez, postmaster.

(Balance br't forward and cash received.)		Totals.
1902.		
Nov. 1.		
To bal. br't for'd remaining on hand at close of business on ——	$1273.96	
Am't rec'd for 1 dom. M. O., issued No. 2651 to ——	4.00	
Fees received for the orders issued	5	
Total		$1278.01
85		
Nov. 2.		
To bal. br't for'd remaining on hand at close of business on ——	$1217.76	
Total		$1217.76

Nov. 3.		
To bal. br't for'd remaining on hand at close of business on ——	$1217.76	
Am't rec'd for 15 dom. M. O. issues No. 2652 to 2666 both inclusive	809.05	
Fees received for the orders issued	2.80	
Total		$2029.61
Nov. 4.		
To bal. br't for'd, remaining on hand at close of business on ——	$1329.61	
Total		$1329.61
Nov. 5.		
To bal. br't for'd remaining on hand at close of business on ——	$1329.61	
Am't rec'd for 6 dom. M. O. issued Nos. 2667 to 2672 both inclusive	133.39	
Fees received for the orders issued	.69	
Total		$1463.69
Nov. 6.		
To balance br't f'rd rem. on hand at close of business on ——	$1144.69	
Am't rec'd for 4 dom. M. O. issued No. 2673 to 2676 both inclusive	28.54	
Fees rec'd for orders issued	.29	
Total		$1173.52
Nov. 7.		
To bal. br't for'd rem. on h'nd close of bus.	$1173.52	
Am't rec'd for 1 dom. M. O. issued No. 2677	7.50	
Fees received for the order issued	.8	
Total		$1181.10

(*Cash Paid Out and Balance Remaining on Hand.*)

1902.		
Nov. 1. By 3 domestic orders paid and repaid this day	$60.25	
Balance remaining on hand at close of business today	1217.76	
Total		$1278.01

86

Nov. 2.		
Balance remaining on hand at close of business..	$1217.76	
Total		$1217.76
Nov. 3.		
By 7 domestic orders paid and repaid this day..	700.00	
Balance remaining on hand at close of business today	1329.61	
Total		$1329.61
Nov. 4.		
Balance remaining on hand at close of business..	1329.61	
Total		$1329.61
Nov. 5.		
By 6 domestic orders paid and repaid this day..	319.00	
Bal. remaining on hand at close of business....	1144.69	
Total		$1463.69
Nov. 6.		
Bal. remaining on hand at close of business....	1173.52	
Total		$1173.52
Nov. 7.		
Certificates of deposit received this day for funds remitted to San Juan No. 5472, Nov. 6, for...	665.00	
Balance remaining on hand at close of business..	516.10	
Total		$1181.10

(End of extract)

Witness McLEOD, continuing: Yes, this money order cash book is in Rafael Rodriguez' handwriting, and so is this other book, the Registry of Money Order Advices Received.

87 There is no regular schedule for the mail leaving Coamo and coming to San Juan. It depends on when the mail arrives at Coamo. There is no office between Coamo and San Juan in which registered packages are held more than a day in order to account or receipt for them before they are forwarded. It is a rule that not more than six or seven minutes should be consumed at each office on the route for the purpose of counting registered pack- and attending to the mail.

Cross-examination:

A registered package leaving Ponce and going to Guayama would go by way of Cayey, and then to Guayama on the next mail. Yes, the postmaster at Cayey goes through the registered packages and separates those that are directed to Cayey from those that go to Guayama. There is considerable difference as to this proceedure in Coamo as to the mail that comes from Salinas as to the times when it arrives, but except for that the mail is handled in the same way in Coamo with reference to Salinas and Ponce and San Juan as it is in Cayey with reference to Guayama and Ponce and San Juan.

I started to investigate this case a very few days after the loss occurred. I do remember the exact date. I could not say what day it was I left San Juan. I made inquiries all along the line. I might have inquired at the Caguas office first, I would not say. The postmaster of Coamo at first could not tell me much of anything about this matter because I did not know much to ask him. At the time I asked the postmaster at Aibonito about the registers he showed me the cards and let me examine them, and said that the two registers for which I was inquiring had passed through his office. Those were the registers of the 4th and 5th. Both were from Salinas. I did not ask him in what condition he found them. I did not have
88 the least idea myself of the condition they had started in. No, I never made the statement to the postmaster at Aibonito that if he did not tell me the truth about this matter I would have to recommend his removal from office. I would not make that statement to any man. During the conversation there he did not threaten to resign his office. He has threatened to resign in my presence but it was not in Aibonito. I had no conversation about it that night in any way. When I went back to Aibonito I talked to him again about it. I did not then make any such statement about his resigning. I presume that I first talked to Rafael Rodriguez about this case when I first arrived in Coamo. This conversation I have testified about occurred when I was coming back through there. I talked to him in English. Yes, I might have suggested the word "mulatto" to him when we were talking about Patron. He said that Patron was a man half way between, and I said "mulatto?" and he said yes. He said that Patron wore dark clothes. He said he was short and dark, a mulatto, had a dark mustache, and wore black clothes, but he did notice his height. He had never delivered mail to the man but had seen him before. I am certain that he said he had never delivered mail to Patron. I never talked to Rafael in any other way—always in English. I started to say something to him in Spanish and he answered me in English. It was on my return from Salinas that I inquired of him about these remittances from Salinas and he said he knew nothing about them. He said that they had gone through but that he could not remember anything about them at that time. He said they had gone through his office; there was no question about that. I do not remember whether he showed me his record or

not at that time. I asked him if he remembered about these particular packages and he said that he did not except what his rec-
89 ord showed. The first time I went to Santa Ysabel I remained there some two or three hours; the next time I got there at about four in the afternoon and stayed all night; I was investigating this affair the whole time. Yes, when I was in Salinas I talked with the postmistress about these remittances. She told me that she put in the first remittance $131.00 in silver and $479.00 in bills; that she put the silver in a sack and sewed it up and doubled it and placed the bills in the envelope and addressed it to San Juan and put that on top of the sack and wrapped a string around it and sealed it and on the other side she tied on one of the R. P. tage. She said she sewed the sack across the end and then folded it and put the envelope on top. The mail going from Salinas to Santa Ysabel remains just long enough in Santa Ysabel for the postmaster to take out the registered packages and then dispatch the mail—probably not over three or four minutes. The letter carrier was a witness to the transaction, and there is another man I think. No, as a matter of fact and of law there is no witness required to be present when the Santa Ysabel postmaster takes that mail out of the sack and handles it; neither is a witness required to be present at the same transaction in the Aibonito postoffice.

The conversation with Rafael, and which I have related, took place in his office. No one else was present. I think I have detailed all the conversations that took place about this matter, but I am not sure. I have given the substance of the entire conversation, and all that I could recollect of it. Euripides Rodriguez was not present. I never had any conversation with him. No, Rafael never told me about any conspiracy between him and his brother to extract this money but I believe there was a conspiracy (latter part of answer stricken out by order of court). Rafael did not admit that he was guilty to me.

90 And thereupon, to further maintain the issues on its part, the United States introduced as a witness one JOSÉ DE LOS REYES.

My name is José de los Reyes; I live in Salinas. Guillermina Cintron is my daughter. Since the first part of November last I have made general inquiries in the vicinity of Santa Ysabel and Salinas and Coamo as to the identity of a man by the name of Leon. I have taken about twenty days or over, probably a month, in making these inquiries. In making these inquiries I covered the territory from Salinas to Santa Ysabel. I left Salinas in the morning one day and got to Santa Ysabel about the middle of the day and stopped there to make these inquiries. I then went back to Salinas and two or three days afterward I went up another road from Salinas to Coamo in the barrio of Rio Jueyes and San Ydelfonso. Going in that direction I went as far as the high road that leads from Coamo to Santa Ysabel. Nowhere, in all of these barrios, did I find a man

by the name of F. Leon. I also made inquiry in regard to the identity of a person named P. R. Patron, but never found him either. It takes from an hour to an hour and a quarter to go from Salinas to Santa Ysabel, according to the horse. I was looking for Leon, for Patron and for the peon—the boy—who came to Salinas postoffice to buy the $700.00 worth of postoffice money orders. I never found any of them. I hunted for them from Santa Ysabel to Salinas, from one house to another all along the road, if they had seen such men.

Cross-examination:

I live in Salinas, with my daughter temporarily. I was living there on November 3rd of 1902. I was born and raised in Porto Rico. I have held many offices. I was never connected
91 with the postoffice department. I have been municipal judge of Salinas three times and the fiscal there once.

And thereupon to further maintain the issues on its part, the United States introduced into evidence for the purpose solely of showing the handwriting of Rafael and Euripides Rodriguez, the defendants, three certain letters, which are marked for identification "Exhibits K, KK, and KKK for Government," and which were examined by the jury.

To further maintain the issues on its part the United States then produced as a witness one DAVID SKINNER, who, being duly sworn, testified as follows:

My name is David Skinner; I live in Ponce and am assistant postmaster there. As such assistant postmaster in Ponce I have charge of the money order business of that office. Sometime about the first of November last an inquiry was made at the Ponce postoffice of me if a party could buy money orders at Salinas. I might be able to identify the man that made the inquiry if I saw him again; I am not sure.

(Upon being requested by the district attorney to look around the court room and see if he could find anybody that looked like the man who made the inquiry of him, the witness did so and pointed out Euripides Rodriguez, one of the defendants.)

That inquiry was made of me either the last of October or the first part of November. Between the 30th of October and
92 the 3rd of November. About the 22nd of November an inquiry was made as to what had occurred in my office and that called my attention to it. I have been in the Ponce office since February 1899. I do not know whether I have seen any one of these defendants before the date of which I speak. I do not recollect ever seeing them. Yes, I know now who this man is; I did not know them. He did not tell me where he was from. No, I

cannot swear positively that this was the man that made the inquiry of me, but it is the man, to the best of my judgment. I know who he is now, yes. I have had occasion in the course of my business to have official communication with the postmaster at Coamo. I know that his name is Rafael Rodriguez. I think that the assistant postmaster was one of his brothers. Yes, this inquiry was made of me as to the Salinas postoffice issuing money orders between the last of October and the 3rd of November. The man asked me if he could buy money orders from the Salinas postoffice. The postmaster at Coamo should have official information as to what offices issue money orders.

Cross-examination:

I do not know whether the postmaster at Coamo was under the necessity of getting this knowledge from me in regard to the issue of money orders at the postoffice at Salinas, or not. He may have been under the necessity. I have had officials from other postoffices to ask me questions as to the conduct of their postoffices. I simply state that to the best of my judgment, I believe that Euripides Rodriguez is the man that asked me that question, I cannot swear to it positively. I talked with him a couple of minutes. It was in the postoffice. I was standing in the money order window.
93 I watched him and he went to the table and took some blanks off the table. Application blanks, I mean.

And thereupon, to further maintain the issues on its part, the United States re-called at a witness DONALD E. MCLEOD:

Whereupon, the defendants, by their counsel, moved the court to exclude the testimony of the witnesses McLeod and Boiseneau from the consideration of the jury in so far as the defendant Euripides Rodriguez is concerned for the reason that under the testimony in this case Euripides Rodriguez is not connected in any manner with the alleged conspiracy to abstract money from the postal funds, and even by the testimony of the witness McLeod the defendant Euripides Rodrigues is not connected in any way with the conversations between McLeod and the defendant Rafael Rodriguez, nor by the testimony of the witness Boiseneau is the defendent Euripides Rodriguez connected with the conversations between said last named witness and the defendant Rafael Rodriguez. The court thereupon refused to exclude said testimony from the consideration of the jury, whereupon, defendants, by their counsel, excepted to such ruling.

Witness DONALD E. MCLOED: Yes, I had a conversation regarding this matter with the father of Rafael Rodriguez, in which Rafael Rodriguez was present. That was the night that I examined Rafael's books. It was the 30th of December. In that conversation I accused Rafael of having stolen $165.00 of the two
94 registers, and he denied it, and called in his father, and his father asked me what right I had to accuse his son of such a

thing, and I told him I had every right under the evidence and according to my information, and he wanted to see the evidence. Rafael was present all of this time. I then gave his father a complete story of the case, showing him all the evidence and the handwriting of his son, and when I got through he said "I will pay the amount," and Rafael broke in and said in Spanish "But he says even if you will pay they will have me arrested afterwards" and his father turned to me and asked me if they paid the money would I promise not to bring the case into court, and I told him I would promise nothing of the kind. He wanted me to enter into an agreement about it and I told him I could not, and the law would not allow me. Rafael asked me if he got his father to pay $565.00 if I would drop the other case, and I told him I could not do it. He finally went to see his father to see if he would pay the money and he came back and said that his father said if he was guilty of that to let him suffer. That was all of the conversation. I never at that time, or at any other time, made any proposition to these defendants or to their father to drop the case on the payment of money. I did not promise Mr. Rodriguez that if he would pay the $563.00 that I would drop the other case—the $70.00 stamp case—against his sons. I told him that we would not consider any such proposition.

And thereupon the district attorney, to further maintain the issues on the part of the United States, offered in evidence, in addition to the offer previously made, the accounts and entries in the
95 domestic money order cash book of Rafael Rodriguez, postmaster at Coamo, P. R., from July 1st, 1902, to November 30th, 1902, both inclusive, for the purpose of showing motive on the part of the defendants and the condition of said money order cash book between said dates. Said evidence is not offered to show any substantive default but merely on the question of motive, as it will tend to show that amounts larger than allowed by law and the regulations of the department, were retained during this period, never falling below five hundred or six hundred dollars, and that two weeks after these occurrences the proper amounts were remitted and the money order accounts put in shape.

Whereupon, the defendants, by their counsel, object to the admission of said proposed evidence for the reason that it is irrelevant, immaterial and incompetent, and, upon the court's ruling that same shall be admitted in evidence for the consideration of the jury, the defendants, by counsel, except to said ruling.

And thereupon, to further maintain the issues on its part, the United States re-called the witness JOSÉ DE LOS REYES: who testified as follows:

Yes, I received this letter which you now hand me.

Whereupon, to further maintain the issues on its part, the United States offered in evidence a certain letter which is in the words and figures as follows, to-wit:

(*Translation.*)

"COAMO P. O., *November 22nd*, 1902.

Mr. José de los Reyes, Salinas, P. R.

96 SIR: Mr. Patron came to this office at about four or five on the first of this month; and as it was not possible to pay him the P. O. O. on that day he came again on the 3rd at about 3.30. When I said that he looked like a commission merchant I wanted to say that he looked like a peddler (vendedor ambulante). These kind of commission merchants often call at this office.

Respectfully,

(Signed) RAFAEL RODRIGUEZ, *Postmaster.*

I send you a telegram which I received here yesterday.

Yours, R. R."

This is an answer to a letter written by me to Rafael Rodriguez. I take it that that is his signature to that letter. I wish to make a correction in an answer that I gave here yesterday. I was asked if I had been postmaster and in a moment I said "No," because I did not remember, but after reflection I remember that I had been postmaster at Santa Ysabel. It was thirty-eight years ago.

Cross-examination:

I was postmaster at Santa Ysabel two years mor- or less. I said "No," yesterday because I did not remember. Immediately when I went out of here I remembered it.

Thereupon, the United States rested its case.

Whereupon, the defendants, by their counsel, moved the court to limit the testimony of the two witnesses, Boiseneau and McLeod, so far as their conversations with Rafael Rodriguez *was* con-
97 cerned to said Rafael and not to Euripides Rodriguez, which motion the court overruled, and to which ruling the defendants, by counsel, excepted.

Defense.

And thereupon, to maintain the issues on the part of the defendants, one of the defendants, RAFAEL RODRIGUEZ, after being duly sworn, testified as follows:

My name is Rafael Rodriguez; I am one of the defendants in this case. I have been postmaster at Coamo for about four years. I was postmaster there in the month of November, 1902. I know Mr. McLeod, the inspector. I have seen these money orders which you show me before. I first saw them on November 1st, 1902. P. R.

Patron presented them to me for payment. P. R. Patron was a young man of about twenty years of age; he was not fat and not thin either; he was dressed in dark clothes and had a black mustache. The mustache was heavy. He came to my office on November first and said he wanted to collect the money, and showed me the orders. I saw that they were from Salinas, and I told him I could not pay them because I had not received the advices from Salinas. That was on November first, and about four or five in the afternoon. I saw him again on November 3rd, in the same office. On November 1st he came with the orders to collect them but I told him I could not pay them because I had not received the
98 advices and he said he would come another day. He asked me if he had any letters in the office. I told him I thought there was nonce but I looked in the general delivery and I found a letter addressed to P. R. Patron, and I told him I could not give it to him because I did not know that he was P. R. Patron, but he told me that he could open the letter before me, and I could see if it was to him because the letter was about a cattle business, so I gave him the letter and he opened it in my presence and the letter was talking about a cattle business. That was on November 1st, and on the 3rd he came again and was a man known to me because of that letter, and I paid him the orders. Yes, when I was paying him the money a person came into the office. It was Antonio Redondo. Yes, I heard McLeod's testimony yesterday as to the conversation between me and him. I cannot be sure when Mr. McLeod first mentioned this loss of money to me but it was about the 8th of November, I guess. He came into my office and he asked me if I knew anything about two packages of money orders remittances sent from Salinas, and I told him yes I could remember them. He asked me to show him the books and I showed him the books of the registers in transit. He saw the books and then called Miguel Gomez, who was the mail carrier, and asked him if he could remember that he came that day from Salinas, and he said yes, and then Mr. McLeod left for Salinas I guess because he told me that he needed a horse. He came again on another day, I think it was November 30th. He told me that he wanted to collect that money from me because I was the one that took the money; I told him that I could not pay such an amount because I did not know anything about the loss of the money, and it was better for him to look for the man that took the money. He began to call me a thief and many other things,
99 and I called my father and he came, and Mr. McLeod told my father to pay the money for me for he had come for that purpose from San Juan; and my father said not to talk anything about that but to take me to court and prove that I had taken the money. My father in my presence never offered to pay Mr. McLeod this money. I never offered to pay it to him either. I am positive about that. He told me that if I would pay the money lost from the Salinas postoffice that he would do nothing against me in the stamp case. Yes, he said he would not prosecute me for the stamp

case and he told my father that also. I did not accept the proposition, nor did my father. No, I never admitted to him that I had taken this Salinas money. We talked sometimes in English and sometimes in Spanish. He does not speak Spanish well; only brokenly.

Cross-examination:

Yes, I have had trouble in understanding what Mr. McLeod said in Spanish. I talked to him in Spanish because he talked to me in Spanish. I used to answer him in Spanish because I saw that he was willing to learn the language. No, I did not tell Mr. McLeod the next morning after this conversation I have related that my father said if I was guilty that he would not help me out but would let me be punished for it, and that my father had refused to pay the money and had said if I was guilty I ought to be punished. I did not say that. We did not talk anything more about that. Yes, I did see Mr. McLeod after the conversation and he invited me to come to the barrio "Pedro Garcia." That was when I had the sore finger. He did not talk at all about the matter of a settlement. Antonio Redondo is a witness here. I have known him a long time; he lives in Coamo. He has always lived there; sometimes in Ponce. He was the only man in the office while Patron was there that I could find, because I began to look around town for that Patron and I met Redondo and he told me he was in the office at the time. I do not know whether he knew Patron but he remembered him. I asked him if he knew a man by the name of Patron and I explained to him about collecting the money, and he told me that he remembered him, and said "Do you remember that day I went to the office for stamps and there was a man there signing orders for P. R. Patron"? And I said: "Yes, that is the one," and we did not talk any more about it. I asked him if he knew where Patron lived and he said that he did not know anything more about him. When Mr. Boiseneau and Mr. Letherman were there, I guess I talked to Mr. Letherman and (Mr. Boiseneau) in English. I did not hear Mr. Boiseneau talking Spanish. I do not remember the conversation I had with Mr. Letherman, or whether I told him of the letter I found in the general delivery for P. R. Patron and gave it to him. Yes, Mr. McLeod asked me how I identified Patron and I told him about the letter. I did not tell Mr. McLeod that Patron took a letter out of his pocket addressed to him. Yes, I said that letter was about the cattle business. Yes, I told him that Patron looked like a gambler because gamblers are always dressed with dark cloth clothes. No, I do not know that there is any connection between the cattle business and gambling. He may have been what we call a "commisionista"—one that represents a merchandise house. I do not know who the letter relating to the cattle, and which he showed me, was from. He did not show me the signature. It came in the morning in the

mail from San Juan. I remember about the letter and that it was about the cattle business but not where it was from. No, Patron did not ask me to sign these money orders for him; a postmaster
101 cannot sign money orders. That is not my signature on the bottom of these money orders. That is not my handwriting there either. It was on November 1st in the afternoon that I delivered this letter to Patron and identified him thereby. He had the money orders with him then. Yes, I looked at them and saw from what office they were. No, it did not occur as strange to me, and I did not think anything about it that a man should have seven hundred dollars' worth of money orders from Salinas, dated that same day and wanted to cash them the same day. No, I had never had such an amount of business with Salinas before. I did not explain to him why the advices had not arrived. No, I did not explain the route of the mail to him. No, I do not know where he stayed in the town of Coamo between Saturday and Monday. No, I do not know whether he stayed in Coamo or not. Mr. McLeod's first trip when he asked me about these packages and when I showed him my books was about a week after the packages passed through, or four or five days after. I remembered about the packages, but he asked me if they had an envelope or something on them and I could not remember about that. These packages from Salinas and Santa Ysabel arrive about one o'clock in the afternoon generally. I keep them until ten o'clock the next morning when the mail goes out to San Juan. Yes, I remember that the postmistress at Salinas used to put the envelopes on top of the packages when she made remittances and used to tie them together. I cannot remember as to these two packages, however. No, if that had been a coin sack alone with no envelope but just a tag or ticket on it, I do not think that would have fixed it in my mind, because I received these packages every mail, if not from Salinas then from Juana Diaz or some other place. I cannot remember of ever having re-
102 ceived a bag of silver without any envelope tied on it and with only the tag.

Re-direct:

Yes, I stated that Mr. McLeod went from my office over to the barrio "Pedro Garcia." I did not go with him because I have never been on horseback, and to go to that place one has to go on horseback and I never ride a horse. The reason that I do not ride is that when a boy I had a rupture and the doctor told me never to riade a horse, so I never ride.

And thereupon, to further maintain the issues on their part, one of the defendants, EURIPIDES RODRIGUEZ, being duly sworn, testified as follows:

My name is Euripides Rodriguez; I am one of the defendants in this case. Yes, I heard the testimony of Mr. Skinner. The first time that I saw Mr. Skinner was on the 13th day of January when

he was there in Coamo, at the postoffice, with the inspector. I was introduced to him then. I see him here for the first time since then. I have never seen him in the postoffice in Ponce; I do not know where the postoffice is here. I never went there and asked Mr. Skinner if I could buy postoffice money orders in the Salinas postoffice. Yes, I had a conversation with Mr. Skinner when he was in Coamo on the 13th of January. He asked me if I came to Ponce often and I told him that I did. He told me that he remembered having seen me in the Café Melía, and that was all.

103 Cross-examination:

Yes, I said that I never saw Mr. Skinner before that time he came to Coamo. No, when he told me that he remembered having seen me in the Café Melía I did not reply to him that I remembered seeing him there. I told him that I came to Ponce sometimes and used to go to that café and that he might have seen me there. I said nothing more to him. I had no trouble in understanding Mr. Skinner's Spanish. No, I never had any trouble in understanding Mr. McLoed when he spo*l*e in Spanish. I have had occasion to talk to him considerably in Spanish.

And thereupon, to further maintain the issues on their part the defendants produced as a witness FELIPE RODRIGUEZ, who, being duly sworn, testified as follows:

My name is Felipe Rodriguez; I am the father of Rafael and Euripides. I know Mr. McLeod the inspector. Yes, I saw him in Coamo about the 30th of December. Yes, I have had conversations with him concerning the money lost from the Salinas postoffice. I was at home one day about ten o'clock and my son was talking there with the inspector and he sent for me and told me that the inspector had tried to make him pay out a certain sum which had disappeared, or been robbed from the Salinas postoffice, saying that my son had stolen it. Then I began to converse with the inspector and told him that my son had not stolen anything; he told me that he wanted that sum of money and was going to get it because Rafael had stolen it. I told him no that he had not, and then he began to talk violently about it and I told him to not mention the subject again but to appeal to the courts, and that if my son was guilty he
104 would be punished and that if he was not guilty I would prosecute the calumniators. I never offered to pay Mr. McLeod $563.00 or any other sum. No, Mr. McLeod never made any proposition in regard to the other case, that if I paid the money lost in this case he would not prosecute the other.

(No cross-examination.)

And thereupon, to further maintain the issues on their part, the defendants produced as a witness one ANTONIO REDONDO, who, being duly sworn, testified as follows:

My name is Antonio Redondo; I live in Coamo and have lived there all my life. I know Rafael Rodriguez. Yes, I was in his postoffice on or about the 3rd day of November last. I went there to buy stamps. That office is situated on the same street with my house and two houses from it. Yes, the postoffice is in one room and behind that lives the postmaster and his family in the other rooms. It seems to me that the postoffice room there is a little smaller than this room we are now in. There is a fence or railing in it and on the right going in there is a little gate. There is no writing desk at this railing but a board that serves as a writing desk. There is on the railing and you have to write standing up. It is a board about two feet long. When I went into that postoffice on the third day of November somebody was in there. He was a man dressed in woolen clothes and had shoes on, and he had also a black mustache. This man was standing there at the board writing when I went in. I did not go up to the board, but when a man
105 enters that place he can see everything going on because it is so small. The whole place is about one yard wide by a yard and a half long. This man was writing. I saw the writing; he was signing a postoffice order. The color of the paper was blue. It was shaped like a United States bank note and about that size. Yes, I saw the name he signed to that money order. It was P. R. Patron. I went out of the room first. I did not see whether he got any money or not. I left before he did. I do not know who he is. I never saw him before. I have never seen him since. There were several of these orders and he was signing one of them; they sold me a postage stamp and I went out. I do not know how many orders there were; there were several. Yes, the kind of paper he was signing was like these postal orders which you now show me.

Cross-examination:

That was about four or five o'clock in the afternoon. I do not remember whether I had been to the postoffice before on that day or not. I was going to the postoffice very frequently to get the mail and also to buy stamps. In the house I work for they buy sometimes 1 or sometimes twenty stamps—just what they need. I used to go there to get the mail every day and to buy stamps. I go to get the mail at any time. No, mails do not arrive in Coamo at all hours of the day, but the automobile that comes from the capital has no fixed hour; it gets there at midnight as well as in the morning. I do not remember about it that day because at that time I was busy with my work. Yes, they called my attention not very long ago to the fact that I had been in that office on the third of November. There was nobody else in the office except the man I

saw signing the orders and the postmaster. Yes, I said that
106 his initials were "P. R." I remember that because it was the first time in my life I had seen such initials. I said to myself I wish I were such a bird to go there and get that money. Yes, I said that I saw the money; I saw the postmaster counting the money—gold and silver, and as he was precisely at that moment signing a postoffice money order I presumed it was for him. I said that he had dark clothes on and a coat; I do not know about the vest. I said that I never saw that man afterwards. Yes, he was writing his name and wrote a plain hand. No, it did not remind me of any I had seen before; it was the first time I saw it. It was not similar to any I had seen before. He had a bushy mustache. I cannot say how old he is. No, I cannot tell how old a man is; sometimes you see a little fellow and he is fifty years old. I cannot judge of his age; I am getting bald myself and people think I am old but I am only twenty-three. Yes, I might guess at your age but would make a mistake. Once I was guessing the weight of an ox and missed it ten arrobas. His mustache was black and bushy. I went to the postoffice not to remain there to observe people but to get a stamp and get back at once. I knew a man by that name once who lived in Santa Ysabel, but he died.

(In answer to questions by the court:)

We were almost side by side, the man and I, as the office is very small.

Q. You recollected the name "Patron," but how soon afterwards was it that you called to mind that the initials were P. R.?

Ans. I did not remember it, but I was reminded of it; they said "You went to the postoffice that day?" and I said "Yes," and I was asked if I did not see a man signing some postoffice orders and I said "Yes."

107 Q. You do not recollect the initials by reason of seeing him sign the name?

Ans. I remember it because as I had never seen him sign before and had never seen that name I remembered it.

Q. How soon after that occurrence was it that you recollected the initials?

Ans. I do not remember; I cannot say exactly, but I think it was the middle of December.

Q. Had you done considerable writing in the meantime?

Ans. I am a book-keeper.

Q. Did it occur to you that it was at all remarkable that you should remember these initials?

Ans. There is nothing remarkable about it.

Re-direct:

Yes, I remember now that at the time I saw him signing his name it was "P. R. Patron," and I have always remembered it. I

have said that from the moment I was asked about it from that moment I remembered it.

(In response to questions by the court.)

No, I had no business to make inquiries as to who the man was. I came out first from the place. No, I did not see him if he passed by my place of business after he came out of the postoffice. I went to the postoffice to get a stamp and then went out again. That was the first time I saw him and I have not seen him since.

And thereupon, to further maintain the issues on their
108 part, the defendants, by their counsel, offer in evidence the original record in the case of The United States *versus* Nicolas Jordan with the original indictment aguinst said Jordan. Whereupon the district attorney on the part of the United States objected to the admission of such evidence except to the fact that said Jordan was indicted and the crime for which he was indicted, and stated that he would admit, on the part of the United States, that said Jordan was indicted and was indicted for the crime of perjury. The court thereupon ruled that as it was admitted by the district attorney that said Jordan was indicted and indicted for perjury, that was sufficient and there was no necessity of introducing said indictment and record in evidence, whereupon the defendants, by their counsel, excepted to the ruling of the court excluding said offered evidence. Thereupon the defendants rested their case.

Rebuttal.

Whereupon, the United States, to further maintain the issues on its part, re-called the witness DAVID A. SKINNER, in rebuttal to the defendant's evidence:

I saw the defendant, Euripides Rodriguez, in Coamo about the 13th instant, or on the night I went there. It was in the evening. I did have a conversation with him then. I asked him if he had been in Ponce on the 3rd of November and he said he had. I asked
him if he had been at the Café Melía; he said he had. He
109 said my face was familiar to him and that he had seen me before. I asked him if he had been in the postoffice, and he said that he had never been in the new one very many times, but in the old one many times. The conversation was in Spanish. Mr. McLeod was present, and also Mr. Rodriguez' younger brother.

Cross-examination:

Yes, I speak Spanish and understand everything said to me in that language. I have been speaking Spanish since 1899.

Q. What do you understand the expression "Hay moros en la costa" to mean?

Ans. That there are a certain kind of people on the coast.
Q. What kind of people?
Ans. Certain inhabitants; natives.
Q. Is that all that you understand about it?
Ans. It is a proverb and I have never heard it.

And thereupon to further maintain the issues on its part the United States re-called the witness DONALD E. MCLEOD, who testified as follows:

Yes, I went to Coamo with Mr. Skinner sometimes about the 13th instant. I was present at the conversation between Mr. Skinner and Mr. Euripides Rodriguez at that time. Mr. Skinner asked Euripides if he had not seen him in Ponce and he said he had
110 been in Ponce often. Skinner asked him if he had not seen him in the postoffice, and he said he had not been in the new postoffice very many times, and Skinner said, It seems to me I have seen you in some café—and they mentioned the name of the café—and Euripides said, Yes it might be, and he said to Skinner "Your face is not unfamiliar." I do not recollect anything more of the conversation.

Cross-examination:

The last time that I talked to Mr. Skinner about this conversation was this morning. There was no particular talk about it but I asked him if he remembered the conversation.

And thereupon, the judge of the court re-called the witness GUILLERMA *de* CINTRON, who testified as follows:

Yes, when the boy came with these applications for the money orders he brought the money for them. It was silver and bills. There was $131.00 in silver—just the same amount that I sent away. The balance was in bills. There were twenty-three $1.00 bills; eleven $20.00 bills; twelve $5.00 bills and seventeen bills of $10.00 each. They were the same bills that I sent away in the package.

Cross-examination.

(By ATTORNEY FOR DEFENDANTS.)

When *the* paid me this money I kept it by putting it away in the table there that has a drawer. I put this money separate from the other money.

111 Cross-examination.

By DISTRICT ATTORNEY:

Yes, I had occasion, before I remitted that money, to make a payment of another money order out of it. What was left I kept until it was sent forward.

Government closed its case.
Defendants closed their case.

And thereupon, after argument to the jury by the respective counsel for the Government and for the defense, and before the jury retired to consider of their verdict, the judge of the court charged said jury as follows, to-wit:

Charge of the Court.

"GENTLEMEN OF THE JURY: I feel it unnecessary to call your attention to the importance of the duty which you are discharging. You are engaged in the enforcement of the law—in the performance of that it becomes your duty, however unpleasant it may be, to find a person who has violated the law, guilty. Upon the other hand, it is equally as high a duty, if a man be not shown to be guilty, to find him innocent. You have been selected to discharge this high and important duty because you have said that you
112 could do it fairly, and impartially, and that you would do it fearlessly and according to law and the evidence. You have been selected under the belief that you are good, true, honest men, every one of you, and that you will bring to the discharge of the duties before you your best judgment. It matters not what you or I may think of the law; it is our duty to enforce it. If a law, in any respect, be erroneous we are not responsible for that. We are the agents merely in the enforcement of that law, and no man who has the good of his people and his country at heart could find fault with a man for the honest and faithful discharge of his duty under the law. The United States Government has seen fit, and very properly, to enact a system of laws for the postal service of the country. Those laws are absolutely necessary for the preservation and the proper running of that system. We have seen during the progress of this case, the detail and minutiæ in this system and the exactness required in the execution of it. It is, as occurs to me at this moment, perhaps the greatest business in the country. I know of no other that in its extent is equal to the postoffice business of this country. I know of no business, no governmental department, that comes nearer home to every person in the country than does the postoffice business. It is important, therefore, in a proper case, that the law should be enforced.

Upon the other hand, the common law—the American law—has always paid very great attention and care to the protection of the personal liberty of a man. Indeed, it has been the boast of the common law that it so highly regarded the protection of personal liberty, it would rather many guilty men should go unpunished than one innocent man should suffer. Therefore, the law has said that before a jury can convict a man of a crime it must be
113 shown to the exclusion of a reasonable doubt that he is guilty of that crime. That does not mean if you have a doubt upon any immaterial matter that the guilty man is to be acquitted. That does not mean any mere cobweb of a doubt, or imaginary idea

you may have in your mind that the man may not be guilty, but it means whether, in a plain, common-sense view, just as you would consider a matter of business, or an every day transaction of life, has this man, upon all the testimony, been guilty to the exclusion of a reasonable doubt in my mind. If he has been found guilty, then there is no escape from the duty of the jury. It is your duty to convict him. It is the duty of the court, after conviction, to see that the penalty is pronounced; you have nothing to do with that. Upon the other hand, if you have a reasonable doubt, upon the whole case and all the testimony, as to whether the defendants are shown guilty, it is equally your duty to find them not guilty.

The indictment in this case contains two counts—as they are terms in law. A count, plainly stated, is the statement of a charge against a defendant. In the first count of this indictment the two defendants, Rafael and Euripides Rodriguez, are charged with conspiring together to defraud the United States by taking and stealing money out of a letter. I say to you as a matter of law—and you must accept the law as given to you by the court as the law in the case—it is my duty to tell you what is the law and it is your duty to accept that as the law and to determine what has been proved by the evidence in the case; I have no right to interfere with that province of yours—even in the detail of the testimony by me to you, if I attempt to detail it to you, and I make a mistake in stating it, it is your duty to correct me, but you accept the law from the court.

I tell you as a matter of law, that if these two defendants
114 entered into a conspiracy to take money out of a letter or letters or a package in course of transmission by the mail, one of them, as the testimony tends to show, being the postmaster at Coamo, and the other assistant postmaster,—if they entered into a conspiracy to do that, then whatever one of them may have done in taking that money or getting that money—if it was done—that was the act, in law, of both of them, and both *both* of them are guilty. Of course, you must believe that to the exclusion of a reasonable doubt, both as to the formation of the conspiracy and the taking of the money. That is the charge in the first count; that there was a conspiracy, and that in carrying out that conspiracy one of them took money from a letter or letters.

There is a second count in this indictment. You can find the defendants guilty under one or under both counts. Or under one count you can find them guilty, or under the second count you can find both guilty or only one of them guilty—where it charges them generally with stealing the money. The second count does not charge conspiracy but merely that they took and stole the money from a letter or letters belonging to the United States in transmission by mail. The statutes of the United States in order to protect the mail system of the United States, have provided that if two or more persons enter into a conspiracy to defraud the United States, that the act of any one or more of them in carrying out the conspiracy is the act of both or all of them. There is also a statute of

the United States which has provided that if any one, being in the postal service of the United States at the time extracts from a letter or letters money or anything of value he is guilty of an offence.

115 It has been stated to you by counsel in this case, the evidence is what is termed "circumstantial." It has been said that circumstances do not lie—that they cannot lie. Abstractly, circumstances cannot lie. Of course, the fact that that door is now open is true. That is a circumstance. But, the danger from circumstantial testimony is that you or I might draw wrong inferences from those circumstances. Two of you may be in that adjoining room, and there is the report of a gun and when the door is opened you are found with the gun in your hands, and it has been discharged and the other man is dead. All the circumstances point to you as the guilty man. Unless that is rebutted the jury would be satisfied to the exclusion of a reasonable doubt as to the guilt of the accused, unless there was no other testimony. It is possible a stated case might exist from which the jury would draw wrong inferences from the situation, and they might be mistaken in their conclusion. That is what you are to guard against—from drawing wrong conclusions from all the circumstances proved in this case. That does not mean that you might possibly do such a thing, but you are to determine whether, from a common sense view of the case, under all the testimony, whether a fact is reasonably shown to your satisfaction. If it is, then that would be what might be termed in law proof of the fact. After such full discussion of the testimony by counsel, I hardly think it necessary for me to detail the testimony to you. I shall not undertake to do so. Briefly, I may allude to it, and when I do so am subject to correction from you.

There is no question but what money belonging to the United States was stolen by some one; there is no doubt as to that. All of the parties agree to that; some one committed an offense, and whether it was these defendants, or either of them, you are to

116 determine. The testimony tends to show that on the first day of November, 1902, a letter was written from Santa Ysabel to the postmaster of Salinas of this character:

"I was yesterday in Ponce and the postmaster there told me that you could give me postoffice orders for Coamo, so that I send you $700.00 in order that you may send them to me in postoffice orders. I also send you $2.10 for the payment of the orders.

Respectfully, F. LEON, *Agent.*"

It will perhaps strike some of you as singular that this letter should have been written at Santa Ysabel to the Salinas office, for postoffice orders on Coamo, owing to the distance between the places and their respective situations. It will perhaps strike you as singular, and these are circumstances to be considered by you, that so large a sum as $700.00 or whatever the amount was, should have been sent to

the Salinas postoffice for postoffice money orders, and that it should have been sent in the perhaps remarkable manner it was, by a boy. Whether such things like that are in the ordinary course of business events is a matter for you to determine from your experience and from the testimony. These postoffice orders, the money having been paid for them, were obtained. There is testimony going to show that this money was sent by a person by the name of F. Leon, or by someone assuming that name. Now, it may strike you as quite remarkable that in that section of the country the evidence fails to disclose any one by the name of Leon. These orders were payable to a man by the name of P. R. Patron. It may strike you as quite remarkable that no one in that country seems to know anything about P. R. Patron. If he were dealing in cattle or was in the cattle business or any business in that county it would seem strange that no one should know anything about him. There is evidence tending to show that this boy came with this $700.00 purporting
117 to come from this man, who is unknown in that section of the country, and that it should have been paid at the Coamo postoffice to the other man, who is also unknown there. It was claimed to have been paid to this man Patron who had never been seen before and who has never been seen since. These are circumstances which may strike you as quite singular. They are circumstances from which you are to draw such reasonable inferences as your best judgment will permit as to whether there was a plot or plan by some one to defraud the United States of this money, and if so, who was it. Whether this money was actually paid to a man by the name of P. R. Patron you are to judge from the testimony.

I say to you, as a matter of law, that if these defendants entered into a conspiracy by which one of them was to write a letter to the postmistress at Salinas, and seven hundred dollars of the postoffice money in the postoffice where one of these defendants was postmaster was to be taken out and taken there to Salinas to get the money orders with, and that that money, as San Juan was the depositary for money passing through the Coamo postoffice,—that if they entered into a conspiracy by which that money was to be taken out of the postoffice funds there and sent to Salinas and these postoffice orders obtained on the Coamo office and then the money was to be intercepted by them, or either of them, on its return, and taken out of the package, and that was done, why, they are guilty. If there was that conspiracy between them, both are guilty although only one abstracted the money.

There is another view of this case to which your attention has been called by the argument of both sides, and that is, there is no question from the testimony and it is admitted that this
118 money was paid into this Salinas postoffice. There is testimony tending to show that Mrs. Cintron put up the bills in a package with the silver money. There is testimony tending to show that she put that in the mail. She had a key, and the letter-carrier had no key. That she locked it up; that it went next to

the Santa Ysabel postoffice. The postmaster at Santa Ysabel says that when the package came there, in so far as he could judge it was intact; there was the silver money, and the package containing the letter evidently containing something and that that was sealed. It came to his office with the mail and the mail only stopped there, perhaps eight or ten minutes—you will recollect the time. He testified that it went on its route from there and that when the package left his office it was intact, as it came from the Salinas office. The testimony tends to show that the carrier took it to the Coamo office. There is testimony tending to show that the mail remained in the Coamo office for several hours—I do not recollect the time given, but you will recollect it—but at least for several hours. In other words, there is testimony tending to show that there was an opportunity at that office to take this money; that opportunity was given to unfold this package and take this money. There is testimony tending to show that when that package reached the United States postoffice at Aibonito, the next office from Coamo, that that package was not intact.

Now, you are the judges of all this testimony and the credibility of it. There is testimony tending to show that that package, when it reached the Aibonito office, consisted only of a bag of silver; and that there was no other package with it. I say to you that it does not matter in what character of envelope those bills were enclosed when they were in course of transmission by the mail. If those
110 bills were inclosed in the mail and was a part of it and were abstracted from the mail while in transmission, the man who abstracted them is guilty. There is testimony tending to show that that package, when it left Santa Ysabel for Coamo was intact, and that when it reached Aibonito, the next postoffice after Coamo, it was not intact. It is for you to determine from all the testimony whether the defendants, or either of them, abstracted that money at the Coamo office. You are to determine from the testimony who had the opportunity to do it—you are to judge of that—and what the chances were to do it. You are to determine the credibility of all the witnesses in the case, and the weight you will give to their evidence. You are to determine from all of the testimony, considering it all together, whether in your judgment, as reasonable men, whether these defendants, or either of them are guilty of the charges, or either of the charges in this indictment. If they or either of them, are guilty, and you are satisfied to the exclusion of a reasonable doubt of their guilt then it is your duty to convict them.

No matter what outside feeling you may have as individuals, if you are satisfied that the defendants, or either of them are guilty, you should convict. You have sworn that you have no bias in favor of the Government and no bias against the Government; no bias in favor of the defendants and no bias against them. In other words, upon this testimony to which you have listened you are to find your verdict fairly and impartially, and from all of that testimony, con-

sidering it all, you are to find whether these defendants, or either of them, is guilty of the offense charged in this indictment.

If you should find both of them guilty under the first count, you should say "We, the jury, find the defendants guilty under
120 the first count." If you do not find them guilty under the first count, you say: "We, the jury, find the defendants not guilty under the first count." You then go to the second count. If you believe that without any conspiracy they stole the money out of this package, believing that to the exclusion of a reasonable doubt, you say: "We, the jury, find the defendants guilty under the second count." If you find that neither of them is guilty, you say: "We, the jury, find the defendants not guilty under the second count." If you find one of them guilty under the second count, you say: "We, the jury, find the defendant—giving his name—guilty under the second count, and the other defendant—naming him—not guilty under the second count. In other words, you write out whatever you find as to both or either of these defendants, under both or either of these counts in the indictment. One of you will sign the verdict as foreman.

Gentlemen (to the attorneys) is there anything else?

ATTORNEY FOR DEFENDANTS: We would ask your honor, in view of your honor's ruling on that indictment, to charge the jury that these defendants are not indicted for embezzlement, but solely for theft.

The COURT: I have covered that in the charge to the jury. The charge in this indictment is stealing the money. They must have, one or either of them, stolen the money out of the letters with the intent to convert it to their own use.

ATTORNEY FOR DEFENDANTS: We would then ask your honor to charge that if the jury believe from the evidence that this letter or package came into the possession of the defendants in the course of their employment that then they are not guilty under this indictment.

121 The COURT: Although they stole the money?

ATTORNEY FOR DEFENDANTS: Yes.

The COURT: I cannot give that.

ATTORNEY FOR DEFENDANTS: Please note an exception.

We would ask your honor to charge the jury that the declaration of neither one of the defendants is to be taken against the other unless the jury believes a conspiracy has been established between them.

The COURT: I say that before the declaration or admission of any one defendant can be taken as evidence and considered as against the other defendant, a conspiracy to do this act must be shown between the defendants? In other words, the declaration of one defendant is not evidence as against the other defendant unless the testimony has shown a conspiracy between them to do the act. That conspiracy once shown or appearing, the statement of one of

the parties is the statement of both and the act of one is the act of both.

ATTORNEY FOR DEFENDANTS: We do not think your honor has charged the jury precisely on the question of exclusion of reasonable doubt.

The COURT: Gentlemen of the jury, you must believe the defendants, or either of them, guilty to the exclusion of a reasonable doubt from all the testimony in the case, before you can find them, or either of them, guilty of the offense charged.

And thereupon, the said jury retired to consider of their verdict, and later, returning into court, rendered the following verdict:

"We the jury find the defendants guilty on the first count of this indictment.

Ponce, P. R., Jan'y 29th, 1903.

T. E. LEE, *Foreman.*"

122 And inasmuch as the several matters aforesaid do not appear of record the appellants aforesaid now here tendered to the court this their bill of exceptions herein and ask that same be signed and made part of the record herein, which is accordingly so done, this the 3rd, day of August 1903. The bill has been agreed on by the attorneys and that it be signed as of the date last named as shown by stipulation filed.

WM. H. HOLT, *Judge.*

123 In the District Court of the United States for Porto Rico, Sitting at Ponce.

UNITED STATES
versus
RAFAEL and EURÍPIDES RODRIGUEZ.

Petition of Defendants for Extension of Time to File Transcript of Record upon Writ of Error in the Supreme Court of the United States.

(Filed Dec. 30, 1903.)

Now come the defendants herein and pray the court to grant an extension of time until January 15th, 1904, for the filing in the Supreme Court of the United States of transcript of record in the above entitled cause, and defendants base this application upon the fact that their attorneys since the last order of extension herein, have been occupied in attendance of this court in the December term thereof at Mayaguez.

(Sig.) F. H. DEXTER &
H. T. HORD,
Attorneys for Defendants.

[Endorsed:] Petition for extension of time for filing record.

124 In the District Court of the United States for Porto Rico, Sitting at Ponce.

UNITED STATES
versus
RAFAEL and EURIPIDES RODRIGUEZ.

Order Granting Extension of Time to File Transcript of Record.

(Filed Dec. 30, 1903.)

Now on this 30th day of December, 1903, upon the application of defendants herein and by the consent of the district attorney, defendants are hereby allowed until January 15th, 1904, to file the transcript of record in the Supreme Court of the United States for the purposes of an appeal.

(Sig.) WM. H. HOLT, *Judge.*

I consent to the foregoing order.

(Sig.) N. B. K. PETTINGILL,
U. S. District Attorney.

[Endorsed:] Order granting time to file record.

125 In the District Court of the United States for Porto Rico, Sitting at Ponce.

UNITED STATES
vs.
RAFAEL and EURIPIDES RODRIGUEZ.

Petition for a Writ of Error.

(Filed Dec. 30, 1903.)

To the United States district court for Porto Rico:

The above named defendants Rafael and Eurípides Rodriguez feeling themselves aggrieved by the verdict of the jury and the judgment entered on the twenty-ninth day of January, 1903, come now by F. H. Dexter, their attorney and petitions said court for an order allowing said defendants to prosecute a writ of error to the honorable United States Supreme Court under and according to the laws of the United States in that behalf made and provided, and the said defendants pray that said writ of error may issue in substitution of the appeal applied for and granted in this cause heretofore and defendants say that this petition is made in order that injustice may not be done to them but that they may have the benefit

of the review of this cause by the said Supreme Court of the United States, and your petitioners will ever pray.

(Sig.) F. H. DEXTER &
H. F. HORD,
Attorney for Above Named Defendants.

[Endorsed:] U. S. dist. court. Sitting at Ponce. United States *vs.* Rafael and Eurípides Rodriguez Petition for a writ of error.

126 United States District Court for Porto Rico, Sitting at Ponce.

UNITED STATES
vs.
RAFAEL RODRIGUEZ ET AL. } No. 59.

(Filed Dec. 30", 1903.)

Assignments of Error.

The defendants in this action assign the following errors as those which they allege occurred upon and during the trial of this case, to wit:

1st. That the court erred in admitting in proof, over the objection of these defendants, a letter purporting to be written by one F. (or T.) Leon to the postmaster at Salinas without proof that the said defendants, or either of them, had written said letter or sent it to the said postmaster.

2nd. Because the court erred, in overruling the motion of counsel for these defendants in not striking out the said letter and excluding it from the consideration of the jury, after the prosecution had failed to connect these defendants, or either of them, with the same.

3rd*a*. Because the court erred in admitting in evidence and in allowing the same to go to the jury in this case, seven applications for money orders at the said Salinas post-office without proof that the same had been written by either of these defendants or by their direction and in not excluding the same from the consideration of the said jury after the prosecution had failed to connect the said defendants or either of them with the said applications.

4th. Because the court erred in admitting in evidence herein and in allowing the same to go to the jury (in so far as defendant Euripedes Rodriguez is concerned) and in not afterward striking out the same and excluding the same from the jury, the conversations between the said witness McLeod and the witness Boiseneau alleged by them to have been had with the defendant Rafael Rodriguez, because:—

(*a*.) At the time said conversations were admitted in evidence the prosecution had not established by any evidence that any con-

spiracy existed between these defendants as in the indictment herein is alleged.

(*b.*) That said conversations were not concerning the
127 existence of any conspiracy between said defendant Euripedes Rodriguez and his co-defendant.

(*c.*) That the said conversations having been had with the said Rafael Rodriguez alone and not being about any conspiracy between these defendants should have been by the court limited in their effect to the said Rafael Rodriguez.

5th. Because the court erred in admitting in evidence the cash books of the said Rafael Rodriguez as such post-master showing that he, as such post-master had had on hand from November 1st. 1902, a large sum of money and in further enlarging the admission of said books to include from the 1st. day of July 1902 to the last day of November 1902, because the same was irrelevant, incompetent and immaterial and tended to prejudice the rights of these defendants by causing it to appear that the defendant Rafael Rodriguez was not as such post-master, complying with the postal regulations.

6th. Because the court erred in not allowing these defendants to impeach the witness Jose Reyes (for the prosecution) and in refusing to allow these defendants to ask the said José Reyes whether he had not during the time of the Spanish domination of Porto Rico been arrested and imprisoned for complicity in postal frauds.

7th. Because the court erred in admitting the testimony of the witness Skinner to the effect that some time before the said 1st. day of November 1902, someone whom he, said witness, believed to be the defendant Euripedes Rodriguez, applied at the Ponce post-office to ascertain if money orders could be purchased at the Salinas post-office, because the said Skinner stated specifically that he was not certain as to the identity of the said person so applying and because the said testimony was incompetent, irrelevant and immaterial to the issues herein.

8th. Because, after the prosecution had rested its case, the court erred in not, on the motion of these defendants, limiting the testimony of the said witnesses McLeod and Boisseneau to the said defendant Rafael Rodriguez.

9th. Because the court erred in not admitting in evidence herein the indictment against one Thomas Jordan for perjury to impeach the testimony of the said Jordan, a witness for the prosecution, because it was shown to the court that the said Jordan, at the time of the happening of the events out of which this indictment grew, was the postmaster at Aibonito, the next office to that of defendant
Rafael Rodriguez, and the said Jordan having testified that
128 when the package in question reached his office it did so minus the money alleged to have been stolen, and the defendants herein offered in evidence for the purpose of impeaching the credibility of the said witness Jordan the indictment then pending in said court against him showing that he was then under indictment for perjury in connection with the very transaction out of

which this indictment grew, the court refused to allow defendants to lead the said indictment to the jury and limited these defendants to proving that the said Jordan was under indictment for perjury and refused to allow these defendants to read the said indictment to the jury or to show the particulars of the said charge against the said Jordan.

10th. That the court erred in charging the jury in this case as follows:

"That the mail remained in the Coamo post-office several hours. I do not recollect the time, but at least several hours. In other words the testimony tends to show that there was an opportunity at that office to take this money; that opportunity was given to unfold this package and take this money."

11th. That the court erred in charging the jury as follows:

"I say to you as a matter of law that if these defendants entered into a conspiracy by which one or either of them was to write a letter to the post-mistress at Salinas and $700.00 of the post-office money in the post-office was to be taken out and taken there to get money orders with, that then the money—as San Juan was the depositary of money having to pass through Coamo—that if they entered into a conspiracy by which money was to be taken out of the post-office funds there and sent to Salinas and these post-office orders obtained on the Coamo office and then the money was to be intercepted by them or either of them on its return and taken out of any package and that was done, why then they are guilty. And if there was a conspiracy between them then both are guilty although only one abstracted the money.

12th. That the court erred in overruling the motion of these defendants to quash the panel herein for the reason that the said jury herein were not selected, and impanneled as required by law as in the said motion set out.

13th. That the court erred in overruling the motion heretofore made herein by these defendants to arrest the judgment herein rendered against them for that, as is set out in the said motion, the grand jury which found the bill of indictment herein against them were not drawn, selected and impanneled as required by law.

129 14th. That the court erred in not quashing the indictment herein upon the motion of these defendants, said motion herein filed, for the reasons in the same set out, to wit:—because the said indictment is duplicitous and charges two distinct offenses, to wit;—theft and embezzlement, in each of the counts thereof.

15th. That the court erred in admitting over the objection of these defendants testimony tending to show that the money in the said package contained came into the hands of these defendants or either of them lawfully, because the court had previously ruled that the word "embezzlement" in the said two counts of the said indictment was surplusage and thus in effect reduced the charge herein to theft and conspiracy to commit theft.

16th. That the court erred in refusing to charge the said jury, as

requested by these defendants, as follows:—"If from the evidence you shall believe that the said package or letter came into the possession of defendants lawfully and in the course of their employment then you are instructed that they are not guilty under this indictment."

17th. That the court erred in not setting aside the verdict heretofore rendered against these defendants because these defendants say that the said verdict is not responsive to the issues herein and is silent as to the second count of the said indictment.

18th. That the court erred in charging the jury as in the eleventh assignment above set out for the reason that the first count of the said indictment limits the charge of taking the said money to the defendant Rafael Rodriguez and excludes *the* his co-defendant and the jury found them both guilty on the said first count.

19th. That the court erred in not commenting to the jury upon the testimony of the defendant and in submitting it to said jury for their consideration in view of the fact that the said court did review the testimony for the prosecution and thereby gave the same undue prominence to the prejudice of these defendants to a fair and impartial trial.

20th. That the court erred in overruling the motion of defendants for a new trial herein and in refusing them an opportunity to contradict the testimony of the said witness Nicolas Jordan by the newly discovered evidence in the said motion for a new trial and in the affidavits thereto attached set out.

(Sig.) F. H. DEXTER &
HENRY F. HORD,
Att'ys for Defendants.

[Endorsed:] Assignment of errors. Copy.

130 In the District Court of the United States for Porto Rico, Sitting at Ponce.

UNITED STATES
vs.
RAFAEL and EURÍPIDES RODRIGUEZ.

(Filed Dec. 30, 1903.)

Order Allowing Writ of Error.

On this the 29th day of December 1903 upon motion of Francis H. Dexter, attorney for above named defendants and upon filing a petition for a writ of error and an assignment of errors it is ordered that a writ of error be and is hereby allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein against defendants.

(Sig.) WM. H. HOLT, *Judge.*

[Endorsed:] U. S. dist. court, at Ponce. United States *vs.* Rafael and Eurípides Rodriguez. Order allowing writ of error.

131 In the District Court of the United States for Porto Rico, Sitting at Ponce.

UNITED STATES
versus
RAFAEL and EURÍPIDES RODRIGUEZ. } Writ of Error.

UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable judge of the district court of the United States for Porto Rico:

Because in the record and proceedings as also in the rendition of the judgment of a plea which — in the said district court of the United States for Porto Rico before you between The United States as plaintiff and Rafael Rodriguez and Eurípides Rodriguez, defendants, *in* manifest error have happened to the great damage of the said defendants Rafael Rodriguez and Eurípides Rodriguez as by their complaint appears. We being willing that error if any have happened should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf do command you that judgment be therein given that then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States together with this writ so that you have the same at Washington at the next term of the said Supreme Court to be then and there held *with* the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the
132 United States should be done.

Witness the Honorable Melville Fuller, Chief Justice of the Supreme Court of the United States, this thirtieth day of December, 1903.

H. H. SCOVILLE,
Clerk Dist. Court of the United States for Porto Rico.

[Seal United States District Court for the District of Porto Rico.]

Allowed by
WM. H. HOLT, *Judge.*

133 In the District Court of the United States for Porto Rico, Sitting at Ponce.

UNITED STATES
versus
RAFAEL and EURÍPIDES RODRIGUEZ. } Citation.

UNITED STATES OF AMERICA, *ss:*

To the United States and N. B. K. Pettingill, United States district attorney:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington within thirty days of the date hereof pursuant to a writ of error filed in the clerk's office of the district court of the United States for Porto Rico wherein Rafael Rodriguez and Eurípides Rodriguez are plaintiffs in error and The United States defendant in error, to show cause if any there be why the judgment rendered — the said plaintiffs in error as in the said writ of error mentioned should not be corrected and why a speedy justice should not be done to the parties in that behalf.

Witness the Honorable William H. Holt, judge of the district court of the United States for Porto Rico, this 30th day of December, 1903.

[Seal United States District Court for the District of Porto Rico.]

WM. H. HOLT,
Judge of the Dist. Court of the United States for Porto Rico.

Service of the foregoing citation accepted this 30th day of December, 1903.

N. B. K. PETTINGILL,
U. S. Attorney.

[Endorsed:] U. S. dist. court at Ponce. United States *versus* Rafael and Eurípides Rodriguez. Citation. Filed clerk's office United States district court.

134 In the District Court of the United States for Porto Rico.

THE UNITED STATES OF AMERICA
versus
RAFAEL and EURIPEDES RODRIGUEZ.

I, H. H. Scoville, clerk of the district court of the United States for Porto Rico do hereby certify that the foregoing one hundred and thirty three typewritten pages, numbered from one to one hundred

and thirty three inclusive, are and constitute a true and correct copy of the record and all proceedings in the above and therein entitled cause, as the same remains of record and on file in the office of the clerk of this court, and that the same constitutes the return to the annexed writ of error.

I further certify that the cost of the foregoing return to the writ of error is — dollars, and that said amount was paid by the attorneys for the plaintiff in error.

In witness whereof, I have hereunto set my hand and fixed the seal of said court at San Juan, Porto Rico, this thirty first day of December A. D. nineteen hundred and three.

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE,
Clerk of the District Court of the United States for Porto Rico.

Endorsed on cover: File No. 19,220. Porto Rico D. C. U. S. Term No. 183. Rafael Rodriguez and Euripides Rodriguez, plaintiffs in error, *vs.* The United States. Filed January 28", 1904. File No. 19,220.

FILE COPY.

FILED
MAR 13 1905
JAMES H. MCKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 183.

RAFAEL RODRIGUEZ AND EURIPIDES RODRIGUEZ,
PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

BRIEF FOR PLAINTIFFS IN ERROR.

FRANCIS H. DEXTER,
FREDERIC D. MCKENNEY,
JOHN SPALDING FLANNERY,
Attorneys for the Plaintiffs in Error.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 1612

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 183.

RAFAEL RODRIGUEZ AND EURIPIDES RODRIGUEZ,
PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT OF CASE.

The plaintiff in error, Rafael Rodriguez, was formerly employed in the postal service of the United States as postmaster at Coamo, Porto Rico.

On January 14, 1903, a certain "bill of indictment" charging said Rafael and his brother Euripides with conspiring together "to steal, embezzle and purloin moneys of the United States" is stated by the record to have been pre-

sented to the trial court by "the grand jurors of the United States of America."

This "bill of indictment" contained two counts, the second of which is of no consequence here.

The overt act in furtherance of the alleged conspiracy charged by the first count of the "bill of indictment" was that said Rafael "feloniously did steal, embezzle and purloin divers bank notes and United States notes * * * together amounting to the sum of, and being of the value of, five hundred and sixty dollars, of the money and property of the said United States."

The defendants were arrested and gave bail for their appearance for trial.

On January 26, 1903, the case against them having been called for hearing, prior to their arraignment, they filed a motion to quash the panel of petit jurors for the then pending term on the ground, among others, that the jurors composing the same had not been selected and drawn in the manner prescribed by the governing statute (8).

Evidence concerning the matter of the motion having been heard, the motion was overruled (9).

Thereafter, on the same day, defendants were arraigned and pleaded "not guilty" (9).

Thereupon the marshal of the court was directed to summon from among the bystanders twenty men "to serve on the panel in the case" (9).

From the bystanders so summoned by the marshal eleven jurors were impaneled and sworn. It does not appear how F. H. Waters, the twelfth man on the trial panel, was secured.

The defendants do not appear to have interposed any

specific objection to the trial panel so chosen, and, evidence having been introduced by both parties, the case was submitted to the jury, who returned a verdict of guilty against both defendants "on the first count of this indictment" (10), and on the same day the court sentenced Rafael to be confined in the penitentiary of Porto Rico "for three years at hard labor," and Euripides to be similarly confined "for two years and pay to the United States of America a fine of five hundred dollars ($500) (10).

Thereafter the defendants, by their attorneys, filed a motion in arrest of judgment, basing such motion on the ground that the grand jury which found the indictment against them upon which they were tried and convicted "was not selected or drawn according to law but was drawn without regard to the prescription and requirements of the statute in such case made and provided."

The irregularities specified were:

a. That Ricardo Nadal, the clerk of the court, took no part in the selection of the names which were placed in the jury-box, but that the other jury commissioner of the court, after directing a deputy clerk of the said Nadal to prepare lists and tickets of persons, did place all the said lists and tickets with names in said box himself, and that from the tickets and names so placed in said box by said one commissioner the said jury was subsequently drawn. Said deputy clerk was not and is not a person authorized by law to take part in the selection, drawing, or otherwise designating the grand and petit juries of this court, and had not theretofore been appointed by the court for that purpose.

b. Said deputy clerk is not shown to have been of a differ-

ent political affiliation from Andres Crósas, the jury commissioner theretofore appointed by the court.

c. Said names were not placed in said box alternately by said Crósas, commissioner, and said Nadal, clerk (12–13).

This motion in arrest was sworn to by the defendant Rafael (13).

The motion, having been heard by the court, was overruled, which made the following finding with respect thereto:

"The ground of this motion is that the grand jury that found the indictment was not drawn or selected according to law.

"It appears the regular jury commissioner, Andres Crósas, and the deputy clerk, Frank Antosanti, acted in doing so, the clerk of the court being absent on sick leave. * * * There appears to have been some irregularities and not an exact compliance with the terms of the statute, but both the commissioner (Crósas) and the deputy clerk made the selection and both were present all the time during the selection, and no one else took part in it.

"It is not shown they were not of opposite politics, and this is to be presumed. There was no such irregularity as vitiated the panel, but a substantial compliance with the statute upon the subject" (14).

Defendants in their motion for a new trial assigned, among other errors, that of the trial court in overruling the motion to quash the panel of petit jurors, "for the reason that the said jury were not selected and impaneled as required by the law" (17), and also "in overruling and denying the motion heretofore made by these defendants to arrest the judgment heretofore rendered herein against them for the reasons set out in said motion that the grand jury which found the bill of indictment herein against them were not, as in said motion set out, drawn, selected and impaneled as

required by law and were not for that reason a lawfully constituted grand jury for said purpose" (18).

The motion for new trial was overruled, and the defendants, having sued out a writ of error from this court, assigned as errors for argument thereunder, among others, the two errors last above mentioned (82).

ARGUMENT.

THIS COURT IS POSSESSED OF JURISDICTION TO REVIEW ON WRIT OF ERROR THE PROCEEDINGS OF THE COURT BELOW.

By section 14 of the act of April 12, 1900, commonly called the Foraker act, it was declared—

"That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States." * * *

By section 35 of the same act it is further declared—

"That writs of error and appeals from the final decisions of the * * * district court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the supreme courts of the Territories of the United States; and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied." * * *

The defendants were prosecuted by indictment. The offense with which they were charged was infamous. The crime alleged was against the United States and, contrary to the prohibitions of an United States statute, punishment

awarded them by final sentence was confinement in the penitentiary at hard labor.

In such a case a court of the United States could not proceed against the alleged wrongdoers save upon indictment by a legally qualified grand jury.

Section 800 of the Revised Statutes of the United States declares that—

"Jurors to serve in the courts of the United States, in each State respectively, shall have the same qualifications, subject to the provisions hereinafter contained, and be entitled to the same exemptions, as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned; and they shall be designated by ballot, lot, or otherwise, according to the mode of forming such juries then practiced in such State court, so far as such mode may be practicable by the courts of the United States or the officers thereof. And for this purpose the said courts may, by rule or order, conform the designation and impaneling of juries, in substance, to the laws and usages relating to jurors in the State courts, from time to time in force in such State."

The Porto Rican statutes contain no provisions relating to the selection, drawing, or impaneling of grand jurors, and the United States district court for the district of Porto Rico has issued no rule or order on the subject.

By act of Congress of June 30, 1879 (21 Stats., 43), it is provided that jurors to serve in courts of the United States

"shall be publicly drawn from a box containing at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in section eight hundred of the Revised Statutes, which names shall have been placed therein by the clerk of such court and a commissioner to be appointed by the judge thereof, which commissioner shall be a citizen of good standing residing in the district in which such court is held, and a well-known member of the principal political party in the

district in which the court is held opposing that to which the clerk may belong, the clerk and said commissioner each to place one name in said box alternately, without reference to party affiliations, until the whole number required shall be placed therein, * * * and all juries to serve in courts after the passage of this act shall be drawn in conformity herewith."

The foregoing acts of Congress were brought in question by the contention of the parties, and the right claimed under them was denied by the court. The accused claimed the right under such statutes not to be sentenced to penal servitude for an infamous offense unless first indicted by a grand jury designated and drawn in accordance with law. The deputy clerk of the court was not the clerk of the court. He had no legal authority to take part in the selection of grand juries. It mattered not that he acted in good faith and without prejudice or taint of fraud.

The postmaster or chief of police would have been as competent as he to perform such service. The plea of defendants in this regard was overruled by the court. It thus appears that the accused claimed a right under certain acts of Congress which was denied to him by the trial court. This court, therefore, has jurisdiction to inquire whether there is anything of substance in the claim.

Crowley *vs.* United States, 194 U. S., 461, 467.

MERITS.

THE GRAND JURY HAVING BEEN SELECTED BY A PERSON HAVING NO AUTHORITY WHATEVER TO SELECT THEM, THE WHOLE PROCEEDING OF FORMING THE PANEL WAS VOID. THE OBJECTION TO THE JURY WAS IN TIME.

In United States *vs.* Gale, 109 U. S., 65, it was held that the proper mode of taking objection to the *personnel* of the grand jury, when the matter complained of does not appear of record, is by plea in abatement, and that pleading "not guilty" without having first either challenged or moved to quash or pleaded in abatement, would be deemed a waiver of all irregularity in the composition of the grand jury; but in the same case it was also said:

"There are cases, undoubtedly, which admit of a different consideration, and in which the objection to the grand jury may be taken at any time. These are where the whole proceeding of forming the panel is void, as where the jury is not a jury of the court or term in which the indictment is found; *or has been selected by persons having no authority whatever to select them;* or where they have not been sworn; or where some other fundamental requisite has not been complied with."

To the same effect are:

Sanders *vs.* The State, 55 Alabama, 186.
Miller *vs.* The State, 33 Mississippi, 357.
Curtis *vs.* Commonwealth, 87 Virginia, 590.
Yelm Jim *vs.* Territory, 1 Washington Ty., 63.

The conclusion in the Crowley case (*ubi supra*) is not opposed to this. There the case was made to turn on the sug-

gested incompetency of certain individual members of the grand jury—that is, upon the *personnel*—and it was held that the objection was properly taken by plea in abatement. In the case at bar the objection is fundamental in character, and asserts that the entire proceeding looking to the formation of the panel was without authority of law, and the result attained, viz., the panel itself, was void. A grand jury so selected was without power to return a valid indictment, and in the absence of a valid indictment the trial and conviction of defendants was unconstitutional and void.

As this objection is fundamental in character and lies at the threshold of the case, it seems to be unnecessary to discuss the many other errors which occurred in the course of the trial and which have been duly preserved in the record.

It is respectfully submitted that the sentence of the lower court should be set aside and the accused persons set at large or otherwise dealt with as the law may prescribe.

FRANCIS H. DEXTER,
FREDERIC D. MCKENNEY,
JOHN SPALDING FLANNERY,
Attorneys for the Plaintiffs in Error.

MARCH, 1905.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 183.

RAFAEL RODRIGUEZ AND EURIPIDES RODRIGUEZ, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

MOTION FOR REHEARING.

Now come the plaintiffs in error, by their attorneys of record, and move this honorable court to strike out the judgment of affirmance heretofore entered herein and to grant a rehearing of the cause for errors of law appearing upon the face of the opinion upon which said judgment is predicated:

The vital question in the case being whether the plaintiffs in error could avail themselves on writ of error of the motion in arrest of judgment, which appears at page 13 of the transcript of record, it had to be decided by this court—

1st. Whether said motion in arrest of judgment had been filed in time.

2d. If so, whether the objection to the action of the district court in overruling said motion had been properly preserved of record.

These two questions were disposed of in the opinion as follows:

"If, therefore, the requirement that the grand jurors should be selected by the commissioner and the clerk was a fundamental requisite, that is, if the deputy clerk, in the absence of the clerk, had no authority under any circumstances to act, then the motion in arrest of judgment did not come too late. There are authorities which give some support to the view that this requirement is of substance, and not a mere 'defect or irregularity in matter of form only' (R. S., 1025; Hulse *v.* The State, 35 Ohio St., 421). Whether this position be well taken or not we do not stop to consider; for, assuming that the motion in arrest of judgment was made in time, and assuming even that the court, as matter of law, erred in its interpretation of the statute, *still the accused cannot avail themselves here of that error; for the record does not show any exception taken to the overruling of the motion in arrest of judgment* By not excepting to the ruling of the court the accused must be held to have acquiesced in it, and to have waived the objection made to the grand jury. We perceive no reason why they could not have legally waived an objection based upon the grounds stated in the motion."

The errors complained of are:

First. That in the absence of a statute requiring a bill of exceptions to be settled in such case the established practice of the common law does not require nor permit of the noting of an exception to the overruling of a motion in arrest of

judgment, nor is the practice in the United States courts in such case otherwise.

Second. No presumption that the accused either acquiesced in the action of the district court in overruling the motion in arrest or waived the objection made to the grand jury can be predicated upon this record, because the record itself expressly recites that immediately after the overruling of said motion, on the same day (R., p. 14), the defendants filed their motion for a new trial, wherein was assigned, among others, the following error:

"13. That the court erred in overruling and denying the motion heretofore made by these defendants to arrest the judgment heretofore rendered herein against them for the reasons as set out in said motion, that the grand jury which found the bill of indictment herein against them were not as (is) in said motion set out, drawn, selected, and impaneled as required by law and were not for that reason a lawfully constituted grand jury for said purpose" (R., pp. 17–18)."

Said motion for a new trial having subsequently been "heard and submitted and overruled" (R., p. 23), the defendants petitioned for the allowance of a writ of error (R., p. 79), which was allowed (R., p. 83), and filed in the district court with their said petition for writ of error assignments of errors (R., p. 80) wherein, among others, appears the following:

"13th. That the court erred in overruling the motion heretofore made herein by these defendants to arrest the judgment herein rendered against them for that, as is set out in said motion, the grand jury which found the bill of indictment herein against them were not drawn, selected and impaneled as required by law" (R., p. 82).

Which said assignments of error were sent up to this court with the transcript of record herein and formed the basis of the argument before this honorable tribunal.

Wherefore plaintiffs in error respectfully pray that the judgment of this honorable court existing herein may be set aside and a rehearing granted.

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ARGUMENT.

Bills of exception are the creatures of statutes and are intended to put upon the record matters occurring during the course of a trial which would not otherwise appear thereon. They have no function with respect to matters which of themselves constitute or become a portion of the record proper. Generally speaking, bills of exception have only to do with matters occurring in the course of the trial prior to verdict. In theory, at least, they are settled and signed before the jury retires from the box "to consider of its verdict," and the approved forms so declare the case to have been. If it does not appear from the certificate of the trial judge that the bills of exception were settled before the retirement of the jury, errors predicated thereon will not be considered by the appellate court.

A motion in arrest of judgment cannot be made except after verdict and before judgment or sentence. Such a motion fulfills in many respects the office of a demurrer, and in some cases it has been said to reach only such defects in the record as might have been taken advantage of by demurrer.

Except, in certain jurisdictions, where by statute the action of the trial court in passing upon a demurrer may be made the subject of review by exception properly noted, notwithstanding the aggrieved party pleads over and goes to trial, it is not customary, and established practice does not require the noting of an exception to the judgment or decision of the trial court rendered on demurrer.

In Lee *vs.* Rutledge, 51 Md., 311, where the action of the trial court in overruling a demurrer was the subject of complaint, the court of appeals said:

"The action of the court upon the demurrer has been made the ground of the first bill of exceptions. This was an oversight, as it is hardly necessary to say that questions of law, arising upon the pleadings and decided upon demurrer, are *ipso facto* apparent upon the face of the record, and are not properly the subject of bills of exception."

This ruling, which we understand to be merely declaratory of the established practice in all jurisdictions governed by common-law practice and procedure, was reiterated in the case of Davis, executor, *vs.* Carroll, 71 Maryland, 568, 569, where, in an opinion by McSherry, J., it was said:

"There are four bills of exception in the record. The first was taken to the ruling on the demurrer, and the fourth to the ruling on the motion in arrest of judgment. Such rulings cannot be brought up for review on bills of exception. *But these questions are properly before us on other parts of the record*, and will therefore be considered."

The "other parts of the record" referred to were the demurrer and the motion in arrest themselves, together with the reasons for the latter, which good practice requires to be set forth, and the action of the court in passing upon the same.

The principle upon which such decisions rest is amply set forth in the case of Cushwa *vs.* Cushwa, 9 Gill (Maryland), 242, and also in—

Newcomer *vs.* Keedy, 9 Gill, 263.
Long *vs.* Billings, 7 Washington, 267.
People *vs.* Allen, 43 N. Y., 28.
Nichols *vs.* People, 40 Illinois, 395.

In Mix *vs.* Nettleton, 29 Illinois, 245, where the action was in debt upon a written instrument, a motion for new trial and in arrest of judgment was overruled. On appeal it was contended by appellee that "the record in this case contains no exception to the decision of the court overruling the motion for a new trial and in arrest, and there is no allusion made to these motions in the bill of exceptions." But it was held by the court that—

"By the motion in arrest the question was preserved and this without excepting to overruling the motion. The decision on the motion in arrest is precisely of the same character as a judgment on a demurrer. They both alike question the sufficiency of the record to sustain a judgment."

And the judgment of the court below was reversed.

To like effect is Nichols *vs.* People, *ubi supra.*

In Miles *vs.* Buchanan, 36 Indiana, 491, 501, the court said:

"We next come to consider the assignment of errors. * * * The assignment that the court erred in overruling a motion * * * in arrest of judgment, embraces and includes every valid reason set out in such motion."

To such extent have the decisions of the various courts gone in such matter that it has been held that "the entry of final judgment is, in effect, an overruling of a motion in arrest of judgment" (McIntyre *vs.* People, 38 Illinois, 576), and the passing of sentence on the prisoner has been held a sufficient overruling of a motion in arrest (Weaver *vs.* Commonwealth, 29 Penna. St., 445).

In the absence of direct action on the motion itself, and after judgment had been entered, how would it be possible for the party aggrieved by such judgment to obtain the benefit of the points raised by the motion in arrest if an exception to the overruling of the motion must be made to appear of record?

There is no rule of the United States courts, nor indeed any authoritative decision of any such court, apart, of course, from the very decision now here under discussion, which requires or even indicates that an exception must be noted of record to the overruling of a motion in arrest of judgment before the action of the court in such particular case be reviewed; and, as is above demonstrated, the general practice in the States is to the contrary.

In this connection we call particular attention to the case of Crowley vs. United States, 194 U. S., 461, wherein the controlling question was identical with the question in the case at bar, viz., as to the validity of the grand jury by which the indictment was returned.

In the Crowley case the question was raised first by a plea in abatement and afterwards by a demurrer to the indictment. To the action of the district court in overruling first the plea in abatement and afterwards the demurrer to the indictment no exception was taken or noted of record, but the point was preserved in the assignments of error subsequently filed. Notwithstanding the absence of such exceptions, this court reviewed the rulings of the lower court and reversed its judgment.

In the case now at bar the point was first raised by the motion in arrest of judgment, a perfectly proper course of procedure according to the authorities. It was reiterated in the motion for new trial and preserved in the assignments of error. Why are not the Messrs. Rodriguez entitled to have the same course of justice meted out to them as was meted out to Crowley?

In view of the immediate filing of a motion for a new trial wherein the action of the court in overruling the motion in arrest of judgment was specifically assigned for error and the subsequent argument thereof before the court and the later reassignment of such action as error, under the writ of error from this court and its argument here, it is difficult to perceive how the plaintiffs in error could have given any more strenuous evidence of the fact that they neither acquiesced in the action of the trial judge in such connection nor intended to waive their objection made to the grand jury which returned the indictment against them.

With regard to the propriety of filing a motion for a new trial *after* a motion in arrest has been filed and overruled, it need only be said that such procedure was at best a mere impropriety which, not having been objected to by the United States prior to the submission of such motion to the court and its action thereon, must be held to have been waived.

In view of the foregoing, we earnestly submit that the opinion of this court, in so far as it at least apparently establishes a departure from accepted course of practice in the matter of motions in arrest, should be modified.

If we are correct in this, it would seem that the question as to the validity of the action of the trial judge in overruling the motion in arrest would still be before this court for decision. In such case a rehearing should be granted.

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Attorneys for Plaintiffs in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

RAFAEL RODRIGUEZ AND EURIPIDES Rodriguez, plaintiffs in error, *v.* THE UNITED STATES. } No. 183.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

BRIEF FOR THE UNITED STATES.

STATEMENT.

Plaintiffs in error are brothers, and at the time of the commission of the offense of which they were subsequently convicted, conducted the post-office at Coamo, Porto Rico, one being postmaster and the other assistant postmaster. It appears that they were delinquent and trespassed against a postal regulation requiring them to remit all postal funds in their possession above a certain amount to San Juan, that being the Government depository for the island. The records of their office showed that they *should* have had on hand several hundred dollars in excess of the sum allowed, the inference being that they had used the money. The post-office at Coamo is between Salinas

and San Juan, so that a remittance from the Salinas office to the depository at San Juan would go through the Coamo office.

The assistant postmaster at Ponce testified (Rec., p. 60) that about the 1st of November, 1902, a young man who, to the best of his judgment, was Euripides Rodriguez, one of the defendants, inquired of him at the post-office in Ponce whether a party could purchase money orders at Salinas, and upon an affirmative answer being given, saw him take some blank applications from the table. The witness pointed out Euripides in the court room.

On November 1 a note in the following form, which the evidence tended to show was in the handwriting of Euripides, was handed to the postmaster at Salinas by a boy who delivered to the postmaster $700 in payment for the money orders called for in the note (Rec., p. 29):

SANTA YSABEL, *Nov. 1st, 1902.*

To the POSTMASTER AT SALINAS:

I was yesterday at Ponce, and the postmaster there told me that you could give me post-office orders for Coamo, so that I send you $700.00 in order that you may send them to me in post-office orders.

I also send you $2.10 for the payment of the orders

Respectfully,

F. LEON, *Agent.*

There was a bag containing $131 in silver, and the rest was in bills. This note was accompanied by seven

applications for money orders of $100 each. The following is a copy of one of the applications (Rec., p. 30):

[Stamp of Salinas P. O. dated Nov. 1, 1902.]

APPLICATION FOR MONEY ORDER.

$100.00. No. 90.

Amount: Cien dollars, —— cents.
Sent to P. R. Patron.
City or town: Coamo.
Street and No. ——.
State: ——.
Sent by F. Leon.
Address of sender ——.

The seven orders were duly made out in the following form and delivered to the boy:

UNITED STATES POSTAL MONEY ORDER.

No. 90.

SALINAS, PORTO RICO,
Noviembre 1, 1902.

To be stamped here.
(Coamo, P. R., Nov. 3, 1903.
M. O. B.)
by paying office
Pay to the order of P. R. Patron $100 dollars
—— cents.
One hundred dollars, —— cents.
To the postmaster at Coamo, P. R.
(Signed) GUILLERMA DE CINTRON,
Postmaster.
[Stamp] Salina, P. R., Nov. 1, 1902, M. O. B.
Received payment:
(Signed) P. R. PATRON.

On the day following, which was Sunday, the postmaster at Salinas prepared a letter of transmission, and put the silver in a small bag and the bills in an envelope furnished for that purpose, and sealed the same. The envelope was addressed "Postmaster, San Juan," as was also the package containing the silver. These were both given to the carrier Monday morning and both were traced intact to the Coamo office, where it is alleged the paper money disappeared. (Rec., pp. 31 and 32.) Soon thereafter the defendant, Rafael Rodriguez, remitted to San Juan the amount for which he was in arrears. (Rec., p. 62.)

At the January, 1903, term of the District Court of the United States for Porto Rico, an indictment was returned against the plaintiffs in error charging them with violating the laws of the United States while employed in its postal service. The first count charged a conspiracy to defraud the United States by stealing postal funds coming into the possession of Rafael Rodriguez as postmaster. The second count charged the defendants with theft and embezzlement. (Rec., pp. 1 and 2.)

January 24 defendants moved to quash the indictment upon the ground that the first count did not properly charge a conspiracy; that the second count failed to charge either a conspiracy or that defendant Euripides at the time of commission of alleged offense occupied any position of trust; and that the second count charged two distinct offenses, i. e., embezzlement and theft. (R., p. 7.)

January 26 defendants moved to quash the panel of petit jurors (R., p. 8), as follows:

> Now come defendants above named, by their attorneys, Dexter and Hord, and move the court to quash the panel of the jury this the January term, 1905, of this court, sitting at Ponce, for the reason that the names of the jurors composing the said panel—that is to say, the regular panel—were not publicly drawn from the box containing at the time when drawn the names of not less than three hundred persons possessing the qualities prescribed by section — of the Revised Statutes, which names shall have been placed therein by the clerk of this court and the jury commissioner thereof; but defendants state that the names contained in said jury box were not placed therein by the clerk and the said jury commissioner; the said clerk and the said commissioner did not place one name in said box alternately without reference to party affiliations until the whole number required were placed therein, but on the contrary defendants aver that the names from which said jurors composing the present panel of this court were drawn from said box were placed therein by the deputy clerk of this court and by the deputy marshal, John L. Miller, in the month of July, 1902; the said jury commissioner, Andres Crosas, was not present at the time and all of the names placed in said box and from which the present panel was drawn were placed therein all at one time by the said deputy clerk and the said deputy marshal, John L. Miller, after all of the names had been pre-

viously taken out from the said jury box and had been revised by the said deputy marshal, John L. Miller, and the said deputy clerk. And defendant prays that in support of this motion this court will hear the oral testimony of the said jury commissioner, Andres Crosas, John L Miller, and Frank Antonsanti, the last a deputy or assistant clerk in the office of the clerk of this court, all of which said persons have been duly subpœnaed to appear before this court for this purpose.

On the same day the following entry was made (R., 9):

> Now come the defendants herein and file motion to quash the regular panel of the petit jury at this term of court, and evidence being heard upon said motion it is overruled.

Evidence upon which this ruling was based, however, does not form a part of the bill of exceptions, and the defendants were not tried by the jury objected to, but before a jury composed of talesmen summoned from the bystanders (R., pp. 9–10); to which jury defendants did not object.

The case was called for trial on January 27 and on the 29th defendants were found guilty on the first count. (R., 10.) A sentence of two and three years, respectively, in the penitentiary was imposed on the same day and final commitment ordered. (R., 11, 12.) February 2 defendants moved in arrest of judgment, on the ground that the grand jury was not properly selected and drawn. (R., 12.) February 6, the motion in ar-

rest and a motion for new trial having been overruled (R., 14, 23), petition for an appeal to this court was granted and defendants admitted to bail. (R., 23.) The writ of error was allowed December 29, 1903. (R., 83.)

The act of Congress of April 12, 1900 (31 Stats., 77), provides:

> SEC. 35. That writs of error and appeals from the final decision of the supreme court of Porto Rico and the district court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the supreme courts of the Territories of the United States, and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought into question and the right claimed thereunder is denied.

ARGUMENT.

THIS COURT HAS NO JURISDICTION.

This court's power to review causes from Porto Rico is derived from section 35 of the act of April 12, 1900 (31 Stats., 85), set out above.

Under that part of the section giving appeals and writs of error in the same cases as from supreme courts of Territories, such cases as might have been reviewed under the act of March 3, 1885 (23 Stats., 443), when decided by the supreme court of a Territory, can now be reviewed when coming from Porto

Rico. (*Royal Insurance Company* v. *Martin* (192 U. S., 149.) But this court has repeatedly held that it has no jurisdiction in criminal cases from the Territories, unless it be to review the judgments of the trial courts in capital cases. (*Gonzales* v. *Cunningham*, 164 U. S., 617; *Amado* v. *United States*, 195 U. S., 172; *New* v. *Oklahoma*, 195 U. S., 252.)

Any jurisdiction, therefore, which might be claimed to exist in the present case, must be derived from that part of section 35, which provides:

> And such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied.

The Constitution was not brought in question and no right claimed under it was denied.

No treaty was in any way involved.

No act of Congress was "brought in question and the right claimed thereunder denied."

Obviously it is necessary, according to this language, that two distinct events occur, viz, an act of Congress must be brought in question and the right claimed thereunder denied. These two elements must unite. This is illustrated in the remarks of the court in *Snow* v. *United States* (118 U. S., 352), in speaking of acts of Congress similar to this. There is no such union in the present case in so far as objection is made to selection of petit jury. No act of Congress is brought in question in that connection. It was an

issue of fact, simply, and that issue was in effect determined in favor of the defendants. The word "and" signifies an addition to what has gone before. (*O'Brien* v. *Carson*, 42 Iowa, 554.) The conjunctive "and" is never construed to mean the same as the disjunctive "or," except for strong reasons, which do not exist in this case. The word is copulative, and words must be given their plain meaning unless a different intention is apparent. In other words, the language used, connected as it is by the conjunction "and," does not create two distinct grounds for appellate jurisdiction. On the contrary, there is a single ground, in the composition of which two elements are essential.

It has been held, for instance, that the obligation to "account for *and* pay over" moneys is but a single liability (*Supervisors* v. *Kirby*, 25 Wis., 498), and that the word "and" in the phrase "All persons in office at the time of the adoption of this constitution, *and* at the first election under it, shall hold their respective offices," etc., is used in a conjunctive sense. (*Commonwealth* v. *Kilgore*, 82 Pa. St., 396, 398.)

Other like instances are numerous. (*Washington* v. *Corinth*, 55 Vt., 468; *Jones* v. *Commonwealth*, 80 Va., 18, 20; *Leftwich* v. *Neal*, 7 W. Va., 569, 575; *United States* v. *Ten Cases of Shawls*, 2 Paine (U. S.), 162, 166; *Buck* v. *Danzenbacker*, 37 N. J. L., 361.)

A statute, then, must be brought in question. In the present case neither party properly questions the validity, interpretation, or constitutionality of any statute. Possibly there may be evidence of such an

objection as to composition of grand jury, but it came too late, as hereafter shown. This court, therefore, is without jurisdiction.

But even if the statutory provision should be interpreted in a disjunctive sense, still there is no jurisdiction, for the reason that no right was properly claimed under an act of Congress and denied.

1. *Overruling of motion to quash panel not such denial.*

TWELFTH ASSIGNMENT OF ERROR.

The action of the court in overruling the motion to quash the panel of petit jurors, on the ground that they were not properly selected and drawn, was not a denial of a right claimed under an act of Congress, for the following reasons:

(*a*) Objections to jurors not members of panel which tries defendant are of no avail. (*Burt* v. *Panjaud*, 99 U. S., 180.)

The summoning of talesmen from the bystanders under such conditions as existed here is proper. (R. S., sec. 804; *St. Clair* v. *United States*, 154 U. S., 134, 146; *Lovejoy* v. *United States*, 128 U. S., 171; *United States* v. *Eagan*, 30 Fed., 608; *United States* v. *Munford*, 16 Fed., 164; *United States* v. *Rose*, 6 Fed., 136.)

(*b*) Moreover, no objection was raised or exception taken to the jurymen before whom defendants were tried. Both are essential. (*Alexander* v. *United States*, 138 U. S., 353, 355.)

(*c*) The overruling of this motion was based upon evidence adduced before the court (R., p. 9) acting in

accordance with the provisions of section 216 of the Porto Rican Code of Criminal Procedure, which is as follows:

> If the challenge is denied, the denial may be oral, and must be entered on the minutes of the court, and the court must proceed to try the question of fact; and upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

(*d*) As the evidence in support of this motion forms no part of the bill of exceptions, and does not in any way appear in the record, the action of the court in the premises can not be reviewed here. (*Suydam* v. *Williamson*, 20 How., 427, 433; *Baltimore & P. R. R.* v. *Trustees*, 91 U. S., 127, 130; *Storm* v. *United States*, 94 U. S., 76, 81; *England* v. *Gebhardt*, 112 U. S., 502, 505; *Duncan* v. *Atchison, etc., R. R.*, 72 Fed., 808, 812; *State* v. *Henderson*, 109 Mo., 292; *State* v. *McClintock*, 37 Kans., 40; *State* v. *Smith*, 26 La. Ann., 62; *St. Louis, etc., Ry.* v. *Wheelis*, 72 Ill., 538; *Wiggins* v. *Witherington*, 96 Ala., 535.)

(*e*) There is nothing, therefore, to overcome the presumption that the jury was selected and drawn according to law, and that the clerk and jury commissioner performed their duties. (*United States Bank* v. *Dandridge*, 12 Wheat., 68; *Kie* v. *United States*, 27 Fed., 351; *United States* v. *Greene*, 113 Fed, 683, 693; *Osgood* v. *State*, 64 Wis., 472; *People* v. *Madison County*,

125 Ill., 334, 340; *Wheeler* v. *State*, 42 Ga., 306; *Smith* v. *State*, 88 Ala., 73; *Pauska* v. *Daus*, 31 Tex., 72; *Thompson and Merriam on Juries*, secs. 63, 586, and cases cited.)

(*f*) No exception was taken to the action of the court in overruling this motion. (*Alexander* v. *United States, supra.*)

2. *Overruling motion in arrest does not give jurisdiction.*

THIRTEENTH ASSIGNMENT OF ERROR.

The motion in arrest alleges the drawing of the grand jury contrary to law in that the jury commissioner acted with the deputy clerk instead of the clerk; that it was not shown they were of different political affiliation, and that the names were all placed in the box by the deputy clerk by order of the commissioner instead of alternately by the commissioner and clerk. In overruling the motion the court said (Rec., p. 14):

> The ground of this motion is that the grand jury that found the indictment was not drawn or selected according to law. It appears the regular jury commissioner, Andres Crosas, and the deputy clerk, Frank Antonsanti, acted in doing so, the clerk of the court being absent on sick leave. There is no charge of corruption, or that the selection was not by impartial persons. The general rule as to provisions of law for the selection of jurors is that they are only directory. There appear to have been some irregularities, and not an exact compliance with the terms of the statute; but both the commissioner, Crosas, and the deputy clerk made the

> selection, and both were present all the time during the selection, and no one else took part in it. It is not shown they are not of opposite politics, and this is to be presumed. There was no such material irregularity as vitiated the panel, but a substantial compliance with the statute upon the subject.

The overruling of this motion in arrest is not a denial of a right claimed under an act of Congress.

(*a*) It was not made until after defendants had pleaded not guilty to the indictment and had been tried, convicted, and sentenced. Such motions come too late if made after verdict.

Mr. Justice Bradley, delivering the opinion of the court in *United States* v. *Gale* (109 U. S., 65, 69), said:

> Much more would it seem to be requisite that all ordinary objections, based upon the disqualification of particular jurors, or upon informalities in summoning or empaneling the jury, where no statute makes proceedings utterly void, should be taken *in limine*, either by challenge, by motion to quash, or by plea in abatement. Neglecting to do this, the defendant should be deemed to have waived the irregularity. It would be trifling with justice, and would render criminal proceedings a farce, if such objections could be taken after verdict, even though the irregularity should appear in the record of the proceedings.
>
> Wharton, Cr. Pl. and Prac., secs. 344, 350, 426.

In *Agnew* v. *United States* (165 U. S., 36) the defendant, by plea in abatement, objected to the manner of drawing the grand jury. The court, in passing on the question whether or not the plea was made in proper time, said:

> * * * One of these rules is that the defendant must take the first opportunity in his power to make the objection. * * * Another rule is that for such irregularities as do not prejudice the defendant, he has no cause of complaint, and can take no exception. (*United States* v. *Richardson*, 28 Fed. Rep., 61; *United States* v. *Reed*, 2 Blatchford, 435, 456; *United States* v. *Tallman*, 10 Blatchford, 21, 51; *State* v. *Mellor*, 13 R. I., 666; *Cox* v. *People*, 80 N. Y., 500; *People* v. *Petrea*, 92 N. Y., 128)
>
> The original venire was issued November 18, the second venire issued December 2, 1895. The court opened December 3, 1895, and the indictment was returned December 12, yet defendant did not file his plea in abatement until December 17. The plea does not allege want of knowledge of threatened prosecution on the part of defendant, nor want of opportunity to present his objection earlier, nor assign any ground why exception was not taken or objection made before; and, moreover, the plea is fatally defective in that, although it is stated that the drawing "tended to his injury and prejudice," no grounds whatever are assigned for such a conclusion, nor does the record exhibit any such (p. 44).

In the case of *Crowley* v. *United States* (194 U. S., 461, 472) the competency of individual jurors was challenged by plea in abatement. That case is clearly distinguishable from the one under consideration for the reason that in this case the competency of individual jurors is not attacked, and no prejudice to the defendants is alleged.

Mr. Justice Harlan, speaking for the court in the Crowley case, said:

> A leading case upon the question is *Vanhook* v. *State* (12 Texas, 252, 268). The court there said: "The better opinion to be deduced from the authorities to which we have access seems to be that irregularities in selecting and impanelling the grand jury, which do not relate to the competency of individual jurors, can, in general, only be objected by a challange to the array."

The following cases may also be cited:

> *State* v. *Swift*, 14 La. An., 827.
> *State* v. *White*, 35 La. An., 96.
> *State* v. *Jackson*, 36 La. An., 96.
> *People* v. *Ah Lee Doon*, 97 Cal., 171, 176.
> *Brown* v. *State*, 12 Ark., 623, 625.
> *Commonwealth* v. *Freeman*, 166 Pa. St., 332, 334.
> *Brill* v. *State*, 1 Tex. Apps., 572, 575.

(*b*) No exception was taken to the order of the court overruling the motion. (*Alexander* v. *United States*, *supra.*)

(c) Even if the facts were as stated in motions to quash panel and in arrest, action of the court in the premises was proper. (*United States* v. *Eagan*, 30 Fed., 608, 611; *United States* v. *Richardson*, 28 Fed., 61; *United States* v. *Ambrose*, 3 Fed., 283; *United States* v. *Tuska*, 14 Blatch. 5, Fed. Cas. No. 16550; *United States* v. *Greene*, 113 Fed., 683, 692; Wharton, Cr. Pl. and Prac., secs. 350, 388.)

3. *Overruling motion to quash indictment not such denial.*

FOURTEENTH ASSIGNMENT OF ERROR.

The overruling of the motion to quash the indictment did not deny defendants a right claimed under an act of Congress. It was alleged that the first count of the indictment did not properly charge a conspiracy to commit a crime against the laws of the United States. In *Amado* v. *United States* (*supra*), it was moved in arrest that the indictment did not set forth "an offense under the statutes of the United States," but this court said:

> That language amounted to nothing more, in legal effect, than a plea of not guilty, or a demurrer upon the general ground that the indictment did not state enough to show an offense. It was not the assertion of any particular right under the Constitution, or under any treaty, or under an act of Congress, which would be denied to him, if the prosecution was sustained. His contention was only that he was not subject to criminal prosecution by reason of anything set forth in the indictment.

The other objections raised in this connection are addressed to the second count. Defendants were convicted on the first count alone, and these matters therefore need not be considered.

In view of the general rule that indictments will only be quashed in very clear cases (Wharton, Cr. Pl. and Pr., sec. 386 and cases cited), the action of the lower court on these motions would seem above criticism.

Moreover, embezzlement and theft under this section may be charged in a single count. (*United States* v. *Golding*, 2 Cranch C. C., 212, Fed. Cas., No. 15224; *United States* v. *Byrne*, 44 Fed., 188.) The indictment was therefore proper as it stood, without treating the word "embezzlement" as surplusage.

4. *Objections relate to matters of form, cured by statute.*

The sole basis for all the motions was that the jurors were not drawn with such formality as defendants think demanded by the statute, and that the indictment did not properly set out an offense. Such objections relate to matters of form merely, and therefore come within section 1025, Revised Statutes, which provides:

> SEC. 1025. No indictment found and presented by a grand jury in any district or circuit or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected

by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant.

United States v. *Molloy*, 31 Fed., 19, 23.
United States v. *Benson*, 31 Fed., 896.
United States v. *Ewan*, 40 Fed., 451.
Wolfson v. *United States*, 101 Fed., 430.

5. *No prejudice shown or alleged.*

It is not even contended that if true any of the matters objected to tended to prejudice the defendants, and the qualifications and unbiased character of the jurors are not impugned in the slightest degree. "Another general rule is that, for such irregularities as do not prejudice the defendant, he has no cause of complaint and can take no exception."

Agnew v. *United States*, 165 U. S., 36, 44, and cases cited.
Thompson and Merriam on Juries, sec. 276, and cases cited.
Wharton, Crim. Pl. and Pr., sec. 350.
Louisiana v. *Johnson*, 47 La. Ann., 1092.
United States v. *Tuska*, 14 Blatch., 5; Fed. Cas. No. 16550.

6. *Objections relate to extrinsic matters.*

Furthermore, motions in arrest or to quash raise only such objections as appear upon the face of the record. Extrinsic matters must be brought up by the plea in abatement. (*State* v. *Jackson*, 36 La. Ann., 96;

Wickwire v. *State*, 19 Conn., 477, 484; *United States* v. *Kilpatrick*, 16 Fed., 765, 773; *United States* v. *Pond*, 1 Curt. (U. S.), 265, Fed. Cas., No. 16067; *State* v. *Hensley*, 7 Blackf., 324; *Commonwealth* v. *Church*, 1 Pa. St., 105; *Commonwealth* v. *Donahue*, 126 Mass., 51; Thompson and Merriam on Juries, sec. 687, and cases cited; Wharton's Crim. Pl. and Pr., sec. 388, and cases cited.)

Thus, said the court in *Wickwire* v *State* (*supra*):

> It has never been the practice in this State for courts to entertain a motion, whether written or oral, in a criminal cause, to quash it, or erase it from the docket, except for defects apparent on the face of the proceedings; nor are we aware of any case in which such a motion has prevailed. Even in cases where the ground of the motion is apparent on the record, courts will exercise the power of quashing with great caution and only in very clear cases. But to do so where the facts are extrinsic would lead to irregularities in the proceedings, be attended with much practical inconvenience, and, especially in oral motions of this description, be altogether anomalous, inasmuch as the record would not disclose the ground on which the cause was disposed of nor furnish any future practical guide in similar cases.

In *State* v. *Jackson* (*supra*) the court used this language:

> It is equally well settled in criminal jurisprudence that "arrests of judgment arise from intrinsic causes appearing on the face of the record." * * * Criminal jurisprudence has

crystallized the rule that judgment will not be arrested on the ground of irregularities in the summoning of the jury or the composition of the grand jury.

For these reasons there was no lawful claim properly presented. To warrant the exercise of appellate jurisdiction, the right claimed must be such as the law recognizes. If it be not proved to be such claim, then there is not a "right claimed" within the meaning of this statute, and the court is without jurisdiction. That the word "claim" in a statute or deed contemplates lawful claims only is well established. (*Folliard* v. *Wallace*, 2 Johns (N. Y.), 395, 402; *Ludington* v. *Pulver*, 6 Wend (N. Y.), 404, 406; *Fellowes* v. *Clay*, 4 Q. B., 311, 319, 340.) Certainly the phrase in the statute, "right claimed thereunder," means something more than a mere pretense or assertion without any reasonable or substantial foundation. In any event, a mere demand or pretense is not sufficient, because a right must be claimed, and since nothing can be claimed which does not exist, and there was no such right, as we have already seen, ground for appellate jurisdiction has not been shown.

There is nothing else in the record which even approaches to a claim of right under an act of Congress The writ of error should therefore be dismissed for want of jurisdiction.

FIRST AND SECOND ASSIGNMENTS OF ERROR.

These assignments raise objection to the admission in evidence (R., 29) of the letter purporting to have

been written by one Leon, without proof that either of defendants had written said letter or sent it to the postmaster. It was admitted upon the statement of the prosecution that he would afterwards connect it with defendants (R., 14), and evidence was subsequently introduced to show that the letter was written by one of the defendants. (R., 55, 60, 63.) That the order in which evidence shall be introduced lies entirely within the discretion of the trial court is too elementary to warrant discussion. The rule applies to proof of conspiracy. (*Taylor* v. *United States*, 89 Fed., 954; Enc. of Evidence, v. 3, p. 425, and cases cited.)

THIRD ASSIGNMENT OF ERROR.

By this assignment objection is made to ruling of court admitting in evidence (R., 29, 30) the seven applications for money orders, upon the ground that the connection of defendants with them was not established.

These applications for money orders were written by hand (R., 29), and there is evidence showing the handwriting of the defendants. (R., 55, 63, 69.) What better evidence could there be that a paper was written by a person than that it was in his handwriting? Such is the best evidence of which the case is susceptible. A sane man does not call in witnesses to his unlawful acts.

FOURTH ASSIGNMENT OF ERROR.

Error is charged in admitting as evidence the testimony of witnesses Boiseneau and McLeod as to conversations between them and defendant Rafael Rodriguez, because: (*a*) at time of its admission no conspiracy had been shown; (*b*) the conversations did not concern a conspiracy between defendants; (*c*) the conversations were with Rafael alone and should have been limited in effect to him.

(*a*) Evidence tending to show conspiracy was subsequently introduced. (R., 60.)

(*b*) and (*c*) As the conversations did not in any way bring in or mention the name of Euripides he was not thereby injured. (R., 52, 53.)

It appears on page 77 of record that defendants' counsel raised the point involved in this assignment in asking the judge to charge the jury "that the declaration of neither one of the defendants is to be taken against the other unless the jury believes a conspiracy has been established between them," and the judge so charged, defendants' counsel being satisfied with the charge on this point, as no objection was raised or exception taken.

FIFTH ASSIGNMENT OF ERROR.

The admission of the cash books kept by Rafael Rodriguez, as postmaster, is hereby challenged. (R., 55.)

Certainly these books were competent to show the handwriting of defendant, and if they are admissible for any purpose this admission is not error.

But they were admissible to show that there was sufficient money on hand at Coamo to permit the carrying out of the conspiracy in accordance with the theory of the prosecution.

The only objection at the trial was "irrelevant, incompetent, and immaterial," and nothing was said as to specific objection of prejudice raised here.

In the case of *Sparf and Hansen* v. *United States* (156 U. S., 51, 57), it was said:

> * * * It has, therefore, been often held that an objection to evidence as irrelevant, immaterial, and incompetent, nothing more being stated, is too general to be considered on error, if in any possible circumstances it could be deemed or could be made relevant, material, or competent.

SIXTH ASSIGNMENT OF ERROR.

The bill of exceptions contains no record of an objection or exception upon which to base this assignment. (R., 59, 62.)

SEVENTH ASSIGNMENT OF ERROR.

This objects to admission of testimony of witness Skinner that a person whom he believes to have been Euripides Rodriguez applied to him at the Ponce post-office to ascertain whether money orders could be purchased at the Salinas office (R., 60, 70, 71), because witness was not absolutely certain of identity of Euripides.

Such an objection relates only to the weight of the evidence, and does not affect its admissibility.

EIGHTH ASSIGNMENT OF ERROR.

That court erred in refusing to limit testimony of witnesses McLeod and Boiseneau to apply to defendant Rafael alone. (R., 52, 53, 63.) The conversation is itself limited to Rafael. It in no way refers to Euripides. Therefore, no such limitation by the court was necessary or proper.

NINTH ASSIGNMENT OF ERROR.

There is no error in refusing to admit in evidence an indictment against a witness for the purpose of impeaching his credibility. Whilst a witness may be discredited by showing his *conviction* for an offense, it is not competent to show that he has been indicted. The presumption of innocence prevails until conviction. (*Van Bokkelen* v. *Berdell*, 130 N. Y., 141, 145; *Anderson* v. *State*, 34 Ark., 257; *Canada* v. *Curry*, 73 Ind., 246, 249; *West* v. *Lynch*, 7 Daly (N. Y.)) 245.

This rule applies to indictments for perjury. (*Casey-Swasey Co.* v. *Va. St. Ins. Co.*, 75 So. W., 911; *Jackson* v. *Osborn*, 2 Wend. (N. Y.), 555, 558.)

Furthermore, evidence that he was under indictment and of the charge against him was admitted. (R., 45, 70.)

TENTH ASSIGNMENT OF ERROR.

Objection is made to that portion of the charge to the jury in which it is stated that there is evidence tending to show that an opportunity existed at Coamo for taking this money. (R., 76.)

Certainly there was a basis for this statement (R., 43, 45, 53), and the evidence on that point is not contradicted.

ELEVENTH ASSIGNMENT OF ERROR.

That part of the court's charge to the jury here criticised is obviously unobjectionable.

The matters covered by the twelfth, thirteenth, and fourteenth assignments have already been fully commented upon.

FIFTEENTH AND SIXTEENTH ASSIGNMENTS OF ERROR.

It is alleged that the ruling of the court that the word "embezzlement" in the indictment was surplusage, reduced the charges to theft and conspiracy to commit theft, and that, therefore, the court erred in admitting testimony showing that the money came into the hands of the defendants lawfully, and in refusing to instruct the jury that if the money came into the hands of defendants lawfully and in the course of their employment they should be found not guilty under the indictment.

Section 5467 of the Revised Statutes, which is not locally inapplicable and is therefore in force in Porto Rico (sec. 14, act of April 12, 1900, 31 Stats., 80), provides that:

> Any person employed in any department of the postal service who shall secrete, embezzle, or destroy any letter, packet, bag, or mail of letters intrusted to him, * * * and which

> shall contain any note, bond, draft, check, warrant, * * * or other pecuniary obligation or security of the Government * * * of any description whatever, any bank note * * * any such person who shall *steal* or *take* any of the things aforesaid out of any letter, packet, bag, or mail of letters which *shall have come into his possession, either in the regular course of his official duties or in any other manner whatever*, * * * shall be punishable by imprisonment at hard labor for not less than one year nor more than five years.

Two classes of offenses were created by this section, one relating to embezzlement of letters, etc., and the other to stealing the contents. An indictment charging either offense is sufficient. (*United States* v. *Lacher*, 134 U. S., 624, 629; *United States* v. *Taylor*, 1 Hughes, 514, Fed. Cas. No. 16438; *United States* v. *Nott*, 1 McLean, 499, Fed. Cas. No. 15900; *United States* v. *Pelletreau*, 14 Blatch., 126, Fed. Cas. No. 16023.) The action of the court in the premises was therefore proper.

Under this section, as we have already seen, embezzlement and theft may be charged in a single count. (*United States* v. *Golding*, 2 Cranch C. C., 212, Fed. Cas. No. 15224; *United States* v. *Byrne*, 44 Fed., 188.) The court might have upheld the count without treating the word embezzlement as surplusage.

SEVENTEENTH ASSIGNMENT OF ERROR.

The verdict is hereby objected to as not being responsive to the issues and being silent as to the second count.

The court properly instructed the jury (R., 73) that defendants could be found guilty under one or both counts, or that under the second count they could find both or only one guilty.

Both were found guilty under the first count. (R., 10.)

There was evidence upon which to base a verdict of conspiracy. The letter written to the postmaster at Salinas was in evidence (R., 29); also the applications for money orders accompanying it. (R., 39.) The handwriting of both defendants was shown. (R., 55, 60.) Evidently the jury, after comparing the letter and applications with the standards thus established, were not at a loss for proof of conspiracy. There is other evidence connecting Euripides with the matter. (R., 60, 61, 70, 71.)

Furthermore, the court was not requested to instruct the jury that there was not evidence upon which to base a verdict of guilty on the count charging conspiracy. In the absence of such a request the presumption arises that there was sufficient evidence to warrant the trial court in submitting the consideration of the facts to the jury. (*Hansen* v. *Boyd*, 161 U. S., 397, 402; *Hartford Ins. Co.* v. *Unsell*, 144 U. S., 439.)

EIGHTEENTH ASSIGNMENT OF ERROR.

The objection to the first count here raised is sufficiently answered by saying that it charges conspiracy on the part of defendants. Both defendants need not have participated in the actual taking of the money.

NINETEENTH ASSIGNMENT OF ERROR.

This assignment is without merit and, moreover, not the subject of objection and exception at the trial.

TWENTIETH ASSIGNMENT OF ERROR.

This assignment alleges error in overruling motion for new trial and in refusing to permit defendants to contradict the testimony of the witness Jordan by newly discovered evidence.

The newly discovered evidence, according to the affidavits filed, simply tended to impeach the testimony of a witness by showing that he had made statements inconsistent therewith. It might have been competent if introduced at the trial and after a proper foundation had been laid, but a new trial will not be granted for such a purpose. (*United States* v. *Mulholland*, 50 Fed., 413, 419; *Lowry* v. *Mt. Adams, etc., Ry. Co.*, 68 Fed., 827, 829; *Carr* v. *Gale*, 1 Curt., 384, Fed. Cas. No. 2433.)

Overruling or granting of motion for new trial is discretionary with the trial court. In *Blitz* v. *United States* (153 U. S., 312) the court said:

We had supposed that it was well understood by the bar that the refusal of a court of the United States to grant a new trial can not be reviewed upon writ of error.

The Government respectfully requests that the writ of error be dismissed, or that the judgment of the lower court be affirmed.

CHARLES H. ROBB,
Assistant Attorney-General.

GLENN E. HUSTED,
Assistant Attorney.

WASHINGTON, *March, 1905.*

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SUPREME COURT U. S.

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

RAFAEL RODRIGUEZ AND EURIPIDES RODRIGUEZ, plaintiffs in error,
v.
THE UNITED STATES. } No. 183.

SUGGESTION RESPECTING PETITION FOR REHEARING.

It is respectfully suggested to the court that the case of *Crowley* v. *United States* (194 U. S., 461), to which counsel call attention, differs from the one at bar in that the objection to composition of the grand jury was there raised by a plea in abatement filed three days after the indictment, whereas in the present case the objection was not raised until after trial and conviction.

If, as counsel contend, the motion in arrest is in nature of demurrer, then by it objection can be taken to such errors only as are apparent upon the face of the record, and since nothing there appeared to give any basis whatever for an allegation of irregularity in the selecting and impaneling of the grand jury, the motion must have failed for that reason alone. The

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motions in arrest in cases cited all related to objections which appeared of record and therefore could have been taken advantage of without an exception.

Moreover, it is submitted that the better and general rule in State practice is that, to obtain a review of rulings or decisions made after trial or judgment, exceptions thereto are essential. (2 Cyc. L. & Proced., p. 732, and cases cited.) In the Federal courts exceptions are also taken to the overruling of motions in arrest in criminal cases. (*Barrett* v. *United States*, 169 U. S. 218, 219.)

Respectfully submitted.

CHARLES H. ROBB,
Assistant Attorney-General.

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Supreme Court of the United States.

No. 183.—October Term, 1904.

Rafael Rodriguez and Euripedes Rodriguez, Plaintiffs in Error, *vs.* The United States.	In error to the District Court of the United States for the District of Porto Rico.

[May 1st 1905.]

Mr. Justice Harlan delivered the opinion of the Court.

This writ of error brings up for review a final decree of the District Court of the United States for the District of Porto Rico, by which, in conformity with the verdict of a jury, the plaintiffs in error, Rafael Rodriguez and Euripides Rodriguez, were sentenced to confinement in the penitentiary—the former, for three years at hard labor; the latter, for two years and to pay a fine of five hundred dollars.

The indictment contained two counts. The first count charged that on the first day of November 1902, in the District of Porto Rico, the defendants unlawfully conspired together to steal, embezzle and purloin the moneys of the United States, and that, to effect the object of such conspiracy, Rafael Rodriguez, on the above date, being a postmaster of the United States, did feloniously steal, embezzle and purloin out of certain letters which came to his possession as postmaster, and which had not then been delivered to the party to whom they were directed, divers bank notes and United States notes, the property of the United States, of the value of five hundred and sixty dollars. The second count charged that the defendants—Rafael Rodriguez being postmaster as aforesaid—on the above date, and within the said district, feloniously stole, embezzled and purloined bank notes and United States notes, the property of the United States, of the value of five hundred and sixty dollars, out of certain letters addressed to the postmaster of the United States at San Juan, Porto Rico, and intended to be conveyed by mail, which letters had previously come into the possession of Rafael Rodriguez, as postmaster, and had not then been delivered to the party to whom they were directed.

The defendants jointly moved to quash the indictment upon grounds substantially involving its sufficiency. The motion was overruled, the court observing: "The indictment charges the defendants with conspiring to commit an offence, and that, in pursuance to that, one of them did certain acts which, owing to the alleged conspiracy, were the acts of both. The

use of the word embezzle in the indictment is surplusage. The charge is a larceny as described in the indictment." The defendants took an exception.

The defendants then moved to quash the panel of petit jurors, on the ground, among others, that the jurors had not been selected and drawn in the mode required by the Revised Statute of the United States. On this motion evidence was heard, but the evidence was not made a part of the record by bill of exceptions or otherwise. The motion to quash was denied.

Thereupon the defendants were arraigned, and pleaded not guilty. Bystanders were summoned to serve on the panel, and from them a jury was selected. No objection was made to the jury so selected.

The result of the trial was a verdict of guilty on the first count.

After the return of the verdict the accused moved in arrest of judgment upon the following grounds: That the grand jury was not selected or drawn according to the requirements of the statute in such cases made and provided; that the clerk of the court took no part in the selection of the names to be placed in the jury box, but the other jury commissioner of the court, after directing a deputy clerk to prepare lists and tickets of persons, placed all the tickets with names in the box himself; that from the tickets and names so placed in the box by the commissioner the grand jury was subsequently drawn; that the deputy clerk was not and is not a person authorized under the law to take part in the selection or drawing the grand and petit juries of the court; that he had not been theretofore appointed by the court for that purpose; that he was not shown to be of a different political affiliation from the jury commissioner theretofore appointed by the court; and that said names were not placed in the box alternately by the commissioner and the clerk. 21 *Stat.* 43, *c.* 52.

The motion in arrest of judgment was overruled, the court making an order, which contained the following recitals: "It appears the regular jury commissioner, Andres Crosas and the deputy clerk, Frank Antonsanti, acted in doing so, the clerk of the court being absent on sick leave. There is no charge of corruption or that the selection was not by impartial persons. The general rule as to provisions of law for the selection of jurors is, that they are only directory. There appear to have been some irregularities, and not an exact compliance with the terms of the statute; but both the commissioner Crosas and the deputy clerk made the selection and both were present all the time, during the selection, and no one else took part in it. It is not shown they are not of opposite politics, and this is to be presumed. There was no such material irregularity as vitiated the panel but a substantial compliance with the statute upon the subject. The motion in arrest of judgment is overruled."

Subsequently the defendant moved for a new trial upon various grounds. That motion was overruled, and this writ of error was brought.

The first question is one of the jurisdiction of this court to re-examine the judgment below—the Government insisting that we are without jurisdiction.

We are of opinion that this question is settled by *Crowley* v. *United States*, 194 U. S. 461, 462, which was a criminal prosecution for the violation of certain statutes of the United States relating to the postal service.

By the act of April 12th 1900, 31 *Stat.* 85, *c.* 191, establishing a civil government for Porto Rico, it was provided that, except as otherwise provided, the statutory laws of the United States shall have the same force and effect in Porto Rico as in the United States; also, that writs of error and appeals may be prosecuted from the final decisions of the District Court of the United States for Porto Rico "in all cases where . . an act of Congress is brought in question and the right claimed thereunder is denied." § 35. The same act provided that the United States Court for Porto Rico shall have jurisdiction "of all cases cognizant in the Circuit Court of the United States, and shall proceed therein in the same manner as a Circuit Court." § 34. In Crowley's case the contention of the accused, based upon a plea in abatement, was that certain members of the jury finding the indictment were disqualified under the local law to serve as grand jurors, and that the statutes of the United States made it the duty of the District Court to follow the local law in that respect. Referring to the above act, we said: "In this case that act was brought in question by the *contention* of the parties, the contention of the accused being, in substance, that, pursuant to that act of Congress, the court below, in the matter of the qualifications of grand jurors, should have been controlled by the local law relating to jurors, in connection with the statutes of the United States relating to the organization of grand juries and the trial and disposition of criminal causes; and the court below deciding that, notwithstanding the Foraker act, the local act of January 31st 1891 referred to in the plea was not applicable to this prosecution, and that the grand jury finding the indictment, if a grand jury was necessary, was organized consistently with the laws of the United States under which the court proceeded. It thus appears that the accused claimed a right under the act of Congress and under the Revised Statutes of the United States, which, it is alleged, was denied to him in the court below. This court has, therefore, jurisdiction to inquire whether there is anything of substance in that claim."

As the Porto Rican statutes contain no provisions relating to the selection, drawing or empanelling of grand jurors, it was, as the accused contends in this case, the duty of the District Court of the United States for Porto Rico in criminal prosecutions for crimes against the United States, to keep in view

section 800 of the Revised Statutes, which provides: "Jurors to serve in the courts of the United States, in each State respectively, shall have the same qualifications, subject to the provisions hereinafter contained, and be entitled to the same exemptions, as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned; and they shall be designated by ballot, lot, or otherwise, according to the mode of forming such juries then practiced in such State court, so far as such mode may be practicable by the courts of the United States or the officers thereof. And for this purpose the said courts may, by rule or order, conform the designation and impaneling of juries, in substance, to the laws and usages relating to jurors in the State courts, from time to time in force in such States."

It was also its duty, in such prosecutions, to conform to the act of Congress of June 30th 1879, 21 *Stat.* 43, c. 52, which provides that jurors to serve in the courts of the United States "shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in section 800 of the Revised Statutes, which names shall have been placed therein by the clerk of such court and a commissioner, to be appointed by the judge thereof, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk may belong, the clerk and said commissioner each to place one name in said box alternately, without reference to party affiliations, until the whole number required shall be placed therein, . . and all juries to serve in courts after the passage of this act shall be drawn in conformity herewith."

When, therefore, the accused in this case, by their motion in arrest of judgment, claimed the benefit of the above statutes, the acts of Congress referred to were brought in question within the meaning of the act of April 12th 1900, as interpreted in the Crowley case; and the rights asserted by the accused under those statutes having been denied, when the motion in arrest of judgment was overruled, the case could be brought here. The words, "brought in question," in that act do not mean that the accused, in order to bring the final judgment here, must have disputed the validity of the acts of Congress which were alleged to have been violated to their prejudice. It was quite sufficient that they should assert rights under those acts and that the rights so claimed were denied to them. *Crowley* v. *United States, supra.*

The Government however contends that the motion in arrest of judgment came too late, and in support of that view cites the following language from *United States* v. *Gale*, 109 *U. S.* 65, 69: "Much more would it seem to be requisite that all ordinary objections, based upon the disqualification of

particular jurors, or upon informalities in summoning or empaneling the jury, where no statute makes proceedings utterly void, should be taken *in limine*, either by challenge, by motion to quash, or by plea in abatement. Neglecting to do this, the defendant should be deemed to have waived the irregularity. *Wharton Cr. Pl. and Prac., secs.* 344, 350, 426." But in the same case the court said what is pertinent to the present discussion: "There are cases, undoubtedly, which admit of a different consideration, and in which the objection to the grand jury may be taken at any time. These are where the whole proceeding of forming the panel is void, as where the jury is not a jury of the court or term in which the indictment is found; *or has been selected by persons having no authority whatever to select them;* or where they have not been sworn; or where some other fundamental requisite has not been complied with."

Here the objection to the grand jury was, in substance, that it was not such a body as could legally find an indictment. This view rests upon the ground that the names were placed in the box by a jury commissioner, and by a deputy clerk, the latter, it is contended, having no authority to act at all in such a matter in place of the clerk, because the statute required the joint action of a commissioner and the clerk of the court. If, therefore, the requirement that the grand jurors should be selected by the commissioner and the clerk was a fundamental requisite, that is, if the deputy clerk, in the absence of the clerk, had no authority under any circumstances to act, then the motion in arrest of judgment did not come too late. There are authorities which give some support to the view that this requirement is of substance, and not a mere "defect or irregularity in matter of form only." *R. S.* 1025; *Hulse* v. *The State*, 35 *Ohio St.* 421. Whether this position be well taken or not we do not stop to consider; for, assuming that the motion in arrest of judgment was made in time, and assuming even that the court, as matter of law, erred in its interpretation of the statute, still the accused cannot avail themselves here of that error; for the record does not show any exception taken to the overruling of the motion in arrest of judgment. By not excepting to the ruling of the court the accused must be held to have acquiesced in it, and to have waived the objection made to the grand jury. We perceive no reason why they could not have legally waived an objection based upon the grounds stated in the motion.

This disposes of the case; for the assignments of error present no other question that needs to be noticed. Besides, counsel for the accused have properly confined their discussion of the case to the question of the jurisdiction of this court, and to the action of the court below in overruling the motion in arrest of judgment. The judgment is

Affirmed.